No. 24-

IN THE

Supreme Court of the United States

AKMAL NARZIKULOV,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

Whether one or more of the Government's witnesses committed perjury during the trial of the Petitioner that was so inherently contradictory and unreliable that no reasonable Jury could conclude guilt beyond a reasonable doubt in violation of Petitioner's Fifth Amendment right to Due Process and this court's rulings in Napue v. People of the State of Illinois; Jackson v. Virginia; and In re Winship.

Related Cases Statement

This petition for Writ of Certiorari is related to the United States of America v. Akmal Narzikulov, Docket No. 19-cr-223-BMC-1, in the Eastern District of New York judgment date, December 12, 2022, and United States of America (*Appelle*) v. Akmal Narzikulov (*Defendant-Appellant*), Docket No. 22-3153, in the United States Court of Appeals for the Second Circuit, judgment date, May 16, 2024.

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III. Petition for Writ Of Certiorari

Akmal Narzikulov an inmate currently incarcerated at FCI Victorville Medium II in San Bernadino, California, by and through Peter Guadagnino, appointed CJA counsel for the Petitioner, respectfully petitions this Court for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Second Circuit.

IV. Opinions Below

The Court of Appeals unreported Summary Order affirming the judgment of the District Court in United States v. Narzikulov (Docket No. 22-3153-cr) is dated May 26, 2024, and is attached as Appendix A.

V. Jurisdiction

The order of the Court of Appeals was entered on May 16, 2024. This Court granted a sixty (60) day extension to file the Writ of Certiorari on August 5, 2024, making the new deadline October 13, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

VI. Constitutional Provisions Involved

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VII. Statement of the Case

Appellant Akmal Narzikulov (herein after, "Narzikulov" or "Appellant"), stands convicted by a jury in the Eastern District of New York on all counts of an eight-count indictment: (1) conspiracy to unlawfully produce identification documents; (2) conspiracy to commit kidnapping; (3) kidnapping; (4) conspiracy to commit Hobbs Act extortion; (5) Hobbs Act extortion; (6) threatening physical violence in furtherance of a plan to extort; (7) using, carrying, and possessing a firearm to commit a crime of violence; and (8) conspiracy to tamper with witnesses.

Narzikulov, was sentenced to Count 1 (15 years), Counts 2 and 3 (20 years), Counts 4, 5, 6 and 9 (20 years). Counts 1 through 6 and Count 9 to all run concurrently. 3 years of Supervised release on Counts 1, 4, 5, 6 and 9. 4 years of Supervised release on counts 2 and 3. All Supervised release terms to run concurrently. Defendant must pay the mandatory $700.00 special assessment. Restitution ordered in the amount of $1,000.00. The fine was waived. (See Dkt. # 409)

The charges in this case arose out of a conspiracy to fraudulently obtain commercial and taxi drivers' licenses by cheating on computerized exams, a conspiracy of which Narzikulov was the organizer. Under the Government theory and proven at trial Narzikulov was the organizer and leader of a long-running scheme to facilitate cheating on computerized exams by applicants for New York State commercial driver licenses ("CDLs") and New York City Taxi & Limousine Commission ("TLC") licenses. (PSR 11-18).

Narzikulov and his co-conspirators helped driver-license applicants cheat on the

exams in exchange for cash payments, typically charging between $800 to $1,200 per applicant. (PSR 18). In exchange for these payments, Narzikulov's team would outfit the applicants with t-shirts that were designed to conceal smart phones. (Id. at 14). The t-shirts had tiny holes cut in them that permitted the cameras of the smart phones to transmit (via live video stream) the exam questions displayed on the computer screens at testing facilities to other members of the conspiracy, who would review the questions and relay the answers orally to the test takers. (Id.). The applicants heard the answers through small, flesh-colored ear buds that were also provided to them by the scheme participants. (Id.).

During the search that was executed at Narzikulov's residence in the spring of 2019, federal agents recovered multiple ledgers containing handwritten records of hundreds of transactions referencing CDLs or TLC licenses. (Id. at 23). The agents also recovered approximately $293,000 in cash. (Id.). In addition, the Government seized multiple electronic devices that contained dozens of pictures of driver licenses for third parties – pictures that were featured at the trial. (GX 309.10). The search also yielded multiple identification documents and driver licenses of third parties, as well as the electronic equipment used in executing the cheating scheme. The evidence shows that the scheme ran for years and involved hundreds of driver license applicants. In addition, the evidence showed that Narzikulov recruited and employed at various times at least five other co-conspirators to assist him in this illegal enterprise. One of the co-conspirators, Sukhrob Khamrokulov, began working for Appellant in 2017 and had basically no other income during the time he was involved in the Appellant's scheme. Two of the Appellant's coconspirators, whom he employed at various points, testified at trial about the nature and mechanics of Narzikulov's

operation.

The evidence also showed Narzikulov, as a convicted felon, could not legally purchase a firearm, so he arranged for a gun to be purchased in his mother's name. The paperwork showing the purchase of the gun by Narzikulov's mother in February 2019 – as facilitated by Sukhrob Khamrokulov – was admitted at trial. As discussed in greater detail below, Narzikulov used the gun to terrorize a co-conspirator that he believed was stepping out of line, threatening the co- conspirator at gunpoint. Another of Narzikulov's employees, John Doe, worked for him for only a brief time, after which John Doe moved away from New York. Narzikulov came to believe that John Doe owed him money, and when John Doe moved back to New York, Narzikulov organized a crew to kidnap John Doe to force him to return the money Narzikulov believed he owed, plus a significant penalty for having deprived Narzikulov of his money.

On March 28, 2019, Narzikulov and two of his henchmen chased John Doe down the street in front of John Doe's apartment building, after John Doe saw them approaching. Narzikulov and Sukhrob Khamrokulov forcibly pushed John Doe against a wall and then attempted to manhandle John Doe into a waiting car; but John Doe resisted and clung to the handle of the front door of his building. Narzikulov and Khamrokulov then used a taser on John Doe, shocking him until he lost consciousness, so they could drag him to the car driven by their co-conspirator.

Narzikulov and his gang then sought in various ways to force John Doe to pay Narzikulov the money that Narzikulov believed had been taken. First, Narzikulov had John Doe driven to a parking garage, where John Doe was forced to strip. At the garage, phone

calls were placed to John Doe's mother overseas and one other associate of John Doe to force them to make what was in effect a ransom payment on John Doe's behalf. Narzikulov discovered that John Doe had on his person a check made out to a business that John Doe had started; so Narzikulov had John Doe driven to a Bank of America branch for the purpose of opening an account in the name of the business, depositing the check, and withdrawing cash to pay Narzikulov. The trial evidence showed that John Doe did these things under coercion from Narzikulov, but that John Doe could not withdraw the cash from the newly opened account because the check would take twenty-four hours to clear. Narzikulov then forced John Doe to write out a check for $1,000 drawn on the account and directed another co-conspirator, Firuz Juraev, to fill in Juraev's name as the payee on the check and to attempt to cash the check at a check- cashing establishment. When the check cashing establishment declined to cash the check, Narzikulov finally released John Doe, but kept his property, including his green card, as collateral for the sake of extorting John Doe to pay Narzikulov.

As proven at trial, Juraev would later deposit the $1,000 check from John Doe into Juraev's own personal account, from which he then withdrew $1,000 in cash, which he gave to Khamrokulov for delivery to Narzikulov. (Tr. 392- 94). One of the pieces of property that Narzikulov took from John Doe was his cell phone. When looking through the phone, Narzikulov learned that another co-conspirator, Jasur Kamolov, had sent John Doe a text message warning John Doe that Narzikulov was looking for him. Narzikulov arranged to meet Kamolov in a parking lot in Brooklyn in the evening on the day of the kidnaping. (Id. at 22). There, Narzikulov used the gun he possessed to threaten Kamolov, loading the gun in front of him and brandishing it inside the car in which they were meeting. (Id. at 22).

Narzikulov claimed that Kamolov would now be responsible for John Doe's debt as well as John Doe.

According to Juraev, Narzikulov then took out a gun – Juraev did not see from where – and said that (in substance) Kamolov and Giyasov were getting out of hand and that he (Narzikulov) was going to shoot. (Tr. 385). Juraev described the gun as being a "regular pistol," black in color that could be held in one hand. (Tr. 386). Juraev also testified that when Narzikulov pulled out the gun, bullets scattered onto the floor of the car. (Tr. 387, 490). Juraev testified that Narzikulov then calmed down and let Kamolov hold the gun for a time. (Tr. 386-87). Juraev also testified that Kamolov agreed to pay Narzikulov the money that Giyasov owed. (Tr.387).

In addition to the testimony of Kamolov and Juraev, the Government also introduced evidence that a gun was found in a hallway closet during the execution of a search warrant at Narzikulov's residence on the day of his arrest in April 2019. (Tr. 175). In addition, the Government introduced evidence that bags containing loose ammunition were recovered from the same closet. (Tr. 177). The Government further introduced evidence, including expert testimony from Dr. Cassandra Williams of the Office of Chief Medical Examiner for New York City, that DNA testing performed on swabs taken from the gun revealed that the Appellant (along with other unidentified persons) had left his DNA on three different places on the gun. (Tr. 628-31).

In sum, the Government's case against Narzikulov rested squarely on the shoulders of the testimony provided by two co-conspirators Jasur Kamolov and Firuz Juraev. The testimony of Kamolov and Juraev regarding the meeting in the Walgreens parking lot is

inconsistent in certain respects.

Notable, the Government acknowledged the inconsistencies in their testimony in its rebuttal argument. (Tr. 1400).

The essential import of Juraev' testimony is that he was in the car, sitting in the front passenger seat when Kamolov got into the car. In contrast, Kamolov asserts, that Firuz was not in the car. In fact, he testified that Sukhrob was sitting in the front passenger seat first and then when Kamolov got out to get the gun out of the trunk, Sukhrob sat in the back seat next to Juraev. It would have been impossible for Juraev to have been sitting in the front passenger seat if Sukhrob was sitting there. It is clear that either Juraev or Kamolov or both committed perjuries.

In addition, the testimony was that the Appellant was angry, upset and frustrated with Kamolov, hence the reason for threatening Kamolov with the gun. No reasonable jury could have concluded beyond a reasonable doubt given the Appellant's state of mind, Juraev would have been able to disarm the Appellant and hold the gun by simply asking the Appellant to allow him to see the gun because he was curious. In view of this testimony, the Appellant's guilt could not have been proven beyond a reasonable doubt.

IX. REASONS FOR GRANTING THE WRIT

> **Issue A**: The key issue before the Court is whether inconsistent testimony and perjury by government witnesses violated Mr. Narzikulov's due process rights, necessitating a new trial. Mr. Narzikulov argues that fundamental fairness, as guaranteed by the Due Process Clause in the Fifth Amendment, was compromised by the government's reliance on conflicting testimony, which formed the basis of his conviction.

Mr. Narzikulov cites **In re Winship, 397 U.S. 358 (1970)**, where this Court established that due process requires proof beyond a reasonable doubt in all criminal prosecutions, including juvenile adjudications. In this case, however, the district court failed to recognize the material inconsistencies in witness testimony, which could have substantially impacted the jury's assessment of the facts. Mr. Narzikulov contends that the district court abused its discretion by not granting relief under **Rule 33,** despite the fact that key witnesses gave conflicting accounts regarding critical aspects of the alleged crime, particularly surrounding the purported firearm threat in the Walgreens parking lot.

The **Winship** decision further highlights that due process demands a high standard of proof to protect the accused from wrongful conviction. Here, the conflicting testimony raised a reasonable doubt about Mr. Narzikulov's guilt, undermining the integrity of the verdict. The inconsistent statements, coupled with a lack of corroborating evidence on essential facts, created an undue risk of convicting an innocent man, a violation of Mr. Narzikulov's constitutional rights.

Accordingly, Mr. Narzikulov urges the Court to reverse the Second Circuit's decision and remand the case for a new trial, emphasizing the need to uphold due process protections by ensuring that convictions are based on reliable and consistent evidence.

> **Issue B**: Whether the district court's denial of Mr. Narzikulov's motion for a new trial, despite significant inconsistencies in key government witness testimony and the defendant's alleged voluntary disclosure of evidence, violates the due process principles established in **Shotwell Mfg. Co. v. United States, 371 U.S. 341 (1963),** which mandates that voluntary efforts to correct wrongdoing should be considered when evaluating prosecutorial actions and the fairness of a conviction.

This issue raises the question of whether Mr. Narzikulov's due process rights were violated by inconsistent testimony that should have been ground for a new trial under established precedent.

Relevant Facts:

One of the main accusations levied against Narzikulov was that he threatened Firuz Juraev with a gun inside a car at a Walgreens parking lot. While Kamolov claims he was sitting in the car when Juraev was threatened, and allegedly witnessed Narzikulov threatening Kamalov with a gun. Juraev clearly contradicts Kamolov's version of the incident when he stated on several occasions that Kamolov was not there.

It is evident that either Kamolov or Juraev, or both, committed perjury during their testimony given at trial. Given the major discrepancies between their testimony and the fact that the Government did not produce any independent evidence of the incident at Walgreens, no reasonable jury could have concluded beyond a reasonable doubt that Kamalov was threatened with a gun.

- In the District Court defense attorney, Peter Guadagnino, argued that the prosecution's case is based on the testimony of unreliable witnesses, including Firuz Juraev and Jasur Kamolov.
- The defense argued that there are inconsistencies in witness testimony, and that the witnesses may have motives to lie or distort the truth.
- The defense also raised questions about the ownership of a gun allegedly used in the kidnapping, and the lack of evidence connecting Narzikulov to certain crimes.
- The evidence contains multiple references to potential false, misleading, or

inconsistent statements made by witnesses, as well as attempts to conceal evidence.

- The evidence also discusses testimony from various law enforcement officers, including Agent Galicia, who is questioned about her knowledge of certain aspects of the case:
- Agent Galicia is unable to identify the person sitting in the van behind Kamolov and Giyasov, and she lost sight of them when they walked behind the van.
- Agent Galicia is not familiar with the type of gun that was seized from the apartment, and the holsters depicted in the photographs do not match the gun in evidence.
- Agent Galicia was asked multiple times about whether certain tests or analyses were conducted, and she repeatedly responds that she does not know or is not sure.
- Additionally, there are some inconsistencies in her testimony about the objectives of the surveillance operation and the reasons for not taking additional photographs.
- The evidence discusses testimony from Jasur Kamolov, who is being cross-examined by the defense attorney, Peter Guadagnino.
- The questioning focuses on inconsistencies in Kamolov's prior statements to the FBI and the prosecution.
- The evidence details a criminal trial in which the defense attorney is questioning a witness about inconsistencies in prior statements.
- The evidence also discusses the testimony of other witnesses, including Jasur

Kamolov, who describes how he helped people cheat on CDL tests by using equipment such as phones, wires, and earpieces.

The evidence references several potential false or misleading statements made by Juraev, including claiming he only saw Narzikulov at special events, denying knowledge of a kidnapping, and lying about the origin of a $1,000 check.

- Juraev also seems to have made inconsistent statements, such as initially claiming he did not speak to Kamolov about a bounced check, but later admitting that he did.
- Kamolov admits to lying to the FBI, but claims it was out of fear.
- Kamolov also recounts conversations with various individuals who urged him to flee the country in order to avoid testifying against Narzikulov.
- The evidence also discusses the testimony of Firuz Juraev, who seems to have some inconsistencies in his testimony, such as claiming not to understand certain questions or not remembering certain events.
- Juraev also appears to have made false or misleading statements, such as initially claiming he did not know Firdavs, but later admitting this was a lie.
- Juraev seems to have made a few inconsistent or false statements. For example, he initially denies borrowing an additional $1,000 from Narzikulov, but later concedes that he may have told the FBI that he did. (Tr. 508; Lines: 1-25)
- Kamolov claims not to have known Firdavs Giyasov in Uzbekistan, but he apparently told the FBI that they went to the same college there. (Tr. 898; Lines:

18-25)

Additionally, Kamolov did not mention to the FBI that he took a gun from Narzikulov during a confrontation, which he later claims he "forgot" to mention." (Tr. 910; Lines 1-25)

In this case, Mr. Narzikulov's arguments center on his convictions on Counts Six and Seven, which were based on the evidence introduced at trial that Narzikulov threatened violence against Kamolov that night in the Walgreens parking lot in furtherance of his plan to extort Giyasov, in violation of **18 U.S.C. § 1951** (Count Six), and that he brandished a firearm during and in relation to that crime, in violation of **18 U.S.C. § 924(c)** (Count Seven).

The Government's case against Narzikulov rested squarely on the shoulders of the testimony provided by two co-conspirators Jasur Kamolov and Firuz Juraev. Kamolov's and Juraev's accounts of the incident at Walgreens where that Appellant allegedly threatened Firuz Juraev are in direct contradiction. The Government did not introduce testimony by any other individual who witnessed the alleged incident of threat. Despite the glaring discrepancies between the two testimonies, the jury convicted the Appellant on all counts.

Under the standard for establishing perjury in the **Shotwell Mfg. Co**., as well as the circumstances under which perjured testimony might warrant a new trial, it is evident that either Kamolov or Juraev, or both (and others), committed perjury during their testimony given at trial. Given the major discrepancies between their testimony and the fact that the Government did not produce any independent evidence of the incident at Walgreens, no reasonable jury could have concluded beyond a reasonable doubt that Kamalov was threatened with a gun.

There are a few instances where testimony or evidence is clearly called into question. For example, Firuz claims he didn't know what papers were being notarized, but he was present for the entire process. Additionally, Jasur claims he wasn't worried when he saw the bat and TASER because he knew Firdavs was safe, but this seems inconsistent with his later testimony that he warned the Appellant not to go through with the plan because Firdavs would go to the police.

Additionally, Jasur is accused of lying about taking a gun from Narzilkulov and asking about it. Firuz testified that he didn't know what papers were being notarized, while other evidence suggests he may have been more involved. Additionally, both Firuz and Jasur describe the Appellant as angry, but their accounts differ in some critical material details, such as whether the Appellant threatened to shoot Jasur with a gun.

At the trial, the defense attorney argued that three witnesses are "complete liars" and should be disregarded. Additionally, the defense attorney points out that one witness could not remember whether a caller had an accent, while another witness blamed an interpreter for a misunderstanding. The defense attorney also argues that there is no photographic evidence to support certain claims, such as a payment made to the Appellant or the use of a specific gun in a kidnapping.

There was no evidence connecting Narzikulov to the people caught cheating on exams, no evidence of payments to the Taxi and Limousine Commission, and no evidence that the gun found in the apartment was used in the alleged kidnapping. The trial transcripts contain records and reports that could be used to identify inconsistencies or falsehoods.

Additionally, Juraev seems to contradict himself when he first says that he helped his Uber and Lyft friends cheat on CDL licenses, but later claims that he misunderstood the question and only helped people he didn't know. Firuz Juraev, the witness, seems to have some inconsistencies in his testimony. For example, he claims not to understand certain questions, such as whether he included Narzikulov's name when he pled guilty, or whether he needed to help himself from going to jail. Additionally, Juraev claims to have lost the phone with the text message from Narzikulov, which could be seen as suspicious.

The defense argued that the prosecution's case is based on the credibility of various witnesses, including Andrew Barrett, who is described as a "schemer" and "scammer", and the testimony of other unreliable witnesses. Mr. Barrett was charged with Medicare and Medicaid fraud, making false claims, money laundering, and tax fraud. It also states that he was charged with 32 crimes of lying, and that he was released on a $500,000 bond. Mr. Barrett's previous encounters with Judge Matsumoto, which could be relevant to the question of whether he had a motive to testify against Narzikulov. Additionally, his motivations for cooperating with the Government, including his health problems and desire to avoid a long jail sentence.

In sum, these witnesses perjured themselves on a number of points during the testimony, and thus the District Court should have granted a new trial pursuant to **Federal Rule of Criminal Procedure 33**. Here the District Court erred in not granting Appellant Narzikulov's **Rule 29 or 33** motion. The need for a new trial under **Rule 33** "is triggered where there is a serious danger that a miscarriage of justice has occurred."

Thus, the District Court can sit as a thirteenth juror when ruling on a **Rule 29 or 33**

motion. This is consistent with the Court's duty to ensure that the jury did not return a verdict that resulted in a miscarriage of justice. The remedy is not a free pass.

Here, there were several grounds for granting a motion for a new trial "in the interests of justice" under **Rule 33(a)** because the evidence was insufficient to sustain a conviction on all counts. Specifically, the Government failed to establish that the defendant in fact threatened Kamolov with a gun.

The Government's case against Appellant rested squarely on the shoulders of the testimony provided by two co-conspirators Jasur Kamolov and Firuz Juraev. Kamolov's and Juraev's accounts of the incident at Walgreens where the Appellant allegedly threatened Firuz Juraev are in direct contradiction. The Government did not introduce testimony by any other individual who witnessed the alleged incident of threat. Despite the glaring discrepancies between the two testimonies, the jury convicted the Appellant on all counts.

DUE PROCESS CLAUSE

The rule that derived from the Due Process Clause, states that no conviction may be obtained "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime . . . charged." **In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970)**;

see also **Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979).** "See **Jackson, 443 U.S. at 318, 99 S. Ct. at 2788-89** (explaining that "the critical inquiry on [sufficiency] review . . . [is] whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt" (emphasis added)).

In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970), the Supreme

Court held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." Id. at **364, 90 S. Ct. 1068.** The Court noted that this requirement dates "at least from our early years as a Nation" and had been expressed in similar form "from ancient times." Id. at **361, 90 S. Ct. 1068**. The Court reasoned that, use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.

It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. Id. at **364, 90 S. Ct. 1068**. In explanation of the relationship between the reasonable doubt standard and the presumption of innocence, the Court said:

> "The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure. It is a prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence — that bedrock "axiomatic and elementary" principle whose "enforcement lies at the foundation of the administration of our criminal law. "Id. at **363, 90 S. Ct. 1068** (emphasis added) (quoting **Coffin v. United States, 156 U.S. 432, 453, 15 S. Ct. 394, 39 L. Ed. 481 (1895))**. And a few years later, in **Estelle v. Williams, 425 U.S. 501, 503, 96 S. Ct. 1691, 48 L.Ed.2d 126 (1976),** the Court said of the presumption of innocence, that "although not articulated in the Constitution, [it] is a basic component of a fair trial under our system of criminal justice."

The Court has recognized that the presumption of innocence requires that the accused be acquitted so long as the Government has not proved every element of the offense beyond a reasonable doubt, without any requirement that the accused offer

evidence (or indeed lift a finger) in his defense. **Mullaney v. Wilbur, 421 U.S. 684, 95 S. Ct. 1881, 44 L.Ed.2d 508 (1975).**

It is now generally recognized that the presumption of innocence is an inaccurate, shorthand description of the right of the accused to remain inactive and secure, until the prosecution has taken up its burden and produced evidence and effected persuasion, i.e., to say in this case, as in any other, that the opponent of a claim or charge is presumed not to be guilty is to say in another form that the proponent of the claim or charge must evidence it. **Taylor v. Kentucky, 436 U.S. at 483 n. 12, 98 S. Ct. 1930** (emphasis added) (internal quotation marks omitted).

It is therefore a tenet of our criminal law that "[i]f the prosecution fails in its case-in-chief to present evidence establishing a prima facie case for conviction, the defense is entitled to a directed acquittal without the necessity of ever producing its own evidence." **LaFave, Israel, King, 1 Criminal Procedure § 1.4(d) (2d ed. 2004).** (As generally understood, this principle permits the defendant to sit through the trial in total passivity and guarantees a judgment of acquittal unless the prosecution introduces evidence of sufficient persuasive force to sustain a finding against the defendant beyond a reasonable doubt on each essential element of the charge). In the case at bar, Firuz Juraev's and Jasur Kamolov's testimony is not credible and constitutes an "Exceptional Circumstance" for granting a new trial.

Thus, given the contradictory testimony of the co-conspirators, the absence of any eyewitnesses as to Count Six of the indictment, threatening physical violence in furtherance of a plan to extort Kamolov, no reasonable juror could have found the Appellant guilty

beyond a reasonable doubt. The insufficiency of the evidence requires vacating Narzikulov's convictions and entry of a judgment of acquittal as to all counts and a new trial.

In ***Giglio v. United States***, 405 U.S. 150 (1972), this Court held that the prosecution's failure to inform the jury that a witness had been promised not to be prosecuted in exchange for his testimony was a failure to fulfill the duty to present all material evidence to the jury, and constituted a violation of Due Process, requiring a new trial. This is the case even if the failure to disclose was a matter of negligence and not intent. The principle in **Giglio** supports that Mr. Narziculov is entitled to relief based on the ground that testimony of the Government's witnesses was so inherently contradictory and unreliable in this case that no reasonable jury could have conclude guilt beyond a reasonable doubt.

X. CONCLUSION

Based on the foregoing, Appellant Akmal Narzikulov respectfully requests that this Court issue a writ of certiorari to review the judgment of the Second Circuit Court of Appeals.

DATED this 11th day of October, 2024.

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APPENDIX

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22-3153
United States v. Narzikulov

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of May, two thousand twenty-four.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
GUIDO CALABRESI,
MYRNA PÉREZ,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 22-3153

SUKHROB KHAMROKULOV, SHERZOD MUKUMOV, JASUR KAMOLOV, FIRUZ JURAEV, MURODJON SULTANOV,

Defendants,

AKMAL NARZIKULOV,

Defendant-Appellant.

For Appellee: Anthony Bagnuola and Frank Turner Buford, Assistant United States Attorneys, *for* Breon Peace, United States

Attorney, Eastern District of New York, Brooklyn, NY.

For Defendant-Appellant: Peter J. Guadagnino, Jr., Law Offices of Peter Guadagnino, New York, NY.

Appeal from a judgment of the United State District Court for the Eastern District of New York (Cogan, *J.*).

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

Defendant-Appellant Akmal Narzikulov appeals from a judgment entered on December 13, 2022 in the United States District Court for the Eastern District of New York (Cogan, *J.*) convicting him, following a jury trial, of eight counts: (1) conspiracy to unlawfully produce identification documents, in violation of 18 U.S.C. § 1028; (2) conspiracy to commit kidnapping, in violation of 18 U.S.C. § 1201(c); (3) kidnapping, in violation of 18 U.S.C. § 1201(a)(1); (4) conspiracy to commit Hobbs Act extortion, in violation of 18 U.S.C. § 1951(a); (5) Hobbs Act extortion, in violation of 18 U.S.C. § 1951(a); (6) threatening physical violence in furtherance of an extortionate plan, in violation of 18 U.S.C. § 1951(a); (7) brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c); and (8) conspiracy to commit witness tampering, in violation of 18 U.S.C. § 1512(k).[1] Narzikulov filed a post-trial motion for a judgment of acquittal and a new trial pursuant to Federal Rules of Criminal Procedure 29(c) and 33, respectively.[2] ECF No. 268. In a memorandum decision and order entered on August 24, 2021,

[1] On November 18, 2022, after trial but prior to Narzikulov's sentencing, the government moved to dismiss Count Seven of the Indictment, which charged Narzikulov with brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). ECF No. 389. The district court granted the motion and sentenced Narzikulov on the remaining seven counts of conviction on December 12, 2022. *See* ECF Nos. 391, 409.

[2] Rule 29 provides that "[i]f the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." Fed. R. Crim. P. 29(c)(2). Rule 33 provides that "[u]pon the defendant's motion, the

the district court denied Narzikulov's post-trial motion. ECF No. 279. The district court sentenced Narzikulov principally to twenty years in prison. On appeal, Narzikulov principally contends that two government witnesses gave perjured testimony and that the government's proof was generally insufficient to sustain the jury's verdict, warranting either acquittal or a new trial. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, which we discuss here only as necessary to explain our decision to **AFFIRM**.

* * *

This Court reviews challenges to the sufficiency of the evidence *de novo*. *United States v. Capers*, 20 F.4th 105, 113 (2d Cir. 2021). "[D]efendants face a heavy burden[] because our framework for evaluating such challenges is exceedingly deferential." *United States v. Ho*, 984 F.3d 191, 199 (2d Cir. 2020) (quoting *United States v. Baker*, 899 F.3d 123, 129 (2d Cir. 2018)) (internal quotation marks omitted). "This deferential standard 'is especially important when reviewing a conviction of conspiracy . . . . because a conspiracy by its very nature is a secretive operation, and it is a rare case where all aspects of a conspiracy can be laid bare in court with the precision of a surgeon's scalpel.'" *United States v. Lombardozzi*, 491 F.3d 61, 67 (2d Cir. 2007) (quoting *United States v. Pitre,* 960 F.2d 1112, 1121 (2d Cir. 1992)). We must uphold a jury verdict if, "credit[ing] every inference that could have been drawn in the government's favor" and "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." *Capers*, 20 F.4th at 113 (quoting *Ho*, 984 F.3d at 199) (internal quotation marks omitted). "We 'may enter a judgment of acquittal only if the evidence that the defendant committed the crime alleged is nonexistent

court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a).

or so meager that no reasonable jury could find guilt beyond a reasonable doubt.'" *United States v. Raniere*, 55 F.4th 354, 364 (2d Cir. 2022) (quoting *Capers*, 20 F.4th at 113).

We review a district court's denial of a Rule 33 motion for a new trial for an abuse of discretion. *United States v. McCourty*, 562 F.3d 458, 475 (2d Cir. 2009) (internal citation omitted). "Because the courts generally must defer to the jury's resolution of conflicting evidence and assessment of witness credibility," *id,* "[i]t is accordingly only in exceptional circumstances, where there is 'a real concern that an innocent person may have been convicted,' that a court 'may intrude upon the jury function of credibility assessment' and grant a Rule 33 motion," *United States v. Landesman*, 17 F.4th 298, 330 (2d Cir. 2021) (quoting *McCourty*, 562 F.3d at 475–76). For the Court to grant a new trial based on trial perjury, the appellant must demonstrate that the witness committed perjury by "giv[ing] false testimony concerning a material matter with the willful intent to provide false testimony, as distinguished from incorrect testimony resulting from confusion, mistake, or faulty memory." *United States v. Monteleone*, 257 F.3d 210, 219 (2d Cir. 2001). "Simple inaccuracies or inconsistencies in testimony do not rise to the level of perjury." *Id.* (citing *United States v. Sanchez*, 969 F.2d 1409, 1414–15 (2d Cir. 1992)). Even when perjured testimony is clearly identified, we are "reluctan[t] to . . . grant[] . . . a new trial unless we can say that the jury probably would have acquitted in the absence of the false testimony." *Sanchez*, 969 F.2d at 1413–14.

Here, Narzikulov principally argues that one or more witnesses perjured themselves at his trial, and that the district court abused its discretion in failing to afford him Rule 33 relief. We disagree. Narzikulov's argument centers on the allegedly inconsistent accounts of two cooperating witnesses, Firuz Juraev and Jasur Kamolov, regarding the events that led to Narzikulov's indictment on Count Six, for threatening physical violence in furtherance of an extortionate plan.

Juraev and Kamolov were in accord, however, on the essentials of this incident, which occurred in Narzikulov's white Toyota Camry in a Walgreens parking lot: namely, that Narzikulov angrily confronted Kamolov regarding his text to Firdavs Giyasov warning about the co-conspirators' plan to kidnap him; that Kamolov replied that he sent the text for Narzikulov's own good; that Narzikulov thereafter brandished a black pistol and threatened Kamolov; that Kamolov agreed with Narzikulov to pay money Narzikulov believed Giyasov to owe; and that Narzikulov and Kamolov thereafter calmed down, at which point Kamolov briefly held the gun to inspect it. Contrary to Narzikulov's claim, moreover, the inconsistent recollections of the two witnesses as to Juraev's presence in the front passenger seat provide no basis for Rule 33 relief. Indeed, Narzikulov failed to establish before the district court that this and other alleged inconsistencies reflected perjury, rather than "confusion, mistake, or faulty memory." *Monteleone*, 257 F.3d at 219. Nor did he establish that any such discrepancies seriously undercut the witnesses' account as to the key factual question whether Narzikulov threatened Kamolov with a gun in the Walgreens parking lot.

In such circumstances, resolving the discrepancies on which Narzikulov relied at trial turned on an assessment of witness credibility that was squarely within the province of the jury. Narzikulov repeatedly argued to the jury that the inconsistent testimony of the cooperators formed a basis for discrediting them as unreliable. During deliberations, the jurors requested to have Juraev's and Kamolov's testimony regarding "the Walgreens incident" read back to them, suggesting that they examined this specific topic. App'x 1720–22. This is not an "exceptional circumstance[]" that would warrant this Court's intrusion on the jury's assessment of witness credibility. *Landesman*, 17 F.4th at 330. Narzikulov has not shown that perjury occurred, and the district court did not abuse its discretion.

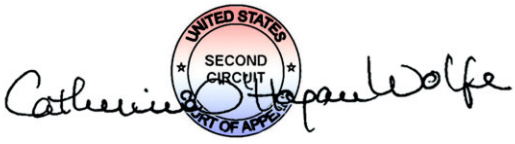
To the extent Narzikulov argues on appeal that the evidence was insufficient as a matter of law, we again disagree. As to Count Six, in addition to the testimony of Kamolov and Juraev, the government admitted into evidence paperwork associated with Narzikulov's procurement of the gun that the government asserted had been used to threaten Kamolov. It presented evidence that authorities located the gun—which matched descriptions provided by the witnesses—along with bags of ammunition, in Narzikulov's apartment. *Id.* An expert witness testified that DNA on the gun matched that of Narzikulov. "[C]redit[ing] every inference that could have been drawn in the government's favor" and "viewing the evidence in the light most favorable to the prosecution," *Capers*, 20 F.4th at 113 (quoting *Ho*, 984 F.3d at 199), a rational juror could have found the essential elements of the crime beyond a reasonable doubt.

Finally, the evidence was sufficient to sustain Narzikulov's convictions on the remaining counts. Narzikulov's arguments again largely hinge on supposedly inconsistent testimony and the credibility of witnesses. As with regard to Count Six, defense counsel raised these arguments for the jury's consideration. We lack a valid basis on which to intrude on the jury's judgment where, as here, the evidence was neither "nonexistent or so meager that no reasonable jury could find guilt beyond a reasonable doubt." *Id.*

* * *

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

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



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	**MEMORANDUM DECISION AND ORDER**
- against -	:	
AKMAL NARZIKULOV,	:	19-cr-223 (BMC)
Defendant.	:	

COGAN, District Judge.

On July 7, 2021, a jury convicted defendant Akmal Narzikulov on all counts of an eight-count indictment. Those counts were (1) conspiracy to unlawfully produce identification documents; (2) conspiracy to commit kidnapping; (3) kidnapping; (4) conspiracy to commit Hobbs Act extortion; (5) Hobbs Act extortion; (6) threatening physical violence in furtherance of a plan to extort; (7) using, carrying, and possessing a firearm to commit a crime of violence; and (8) conspiracy to tamper with witnesses. Defendant now moves for a judgment of acquittal or, alternatively, for a new trial. For the following reasons, the motion is denied.

Although defendant seeks an acquittal on all counts, his motion concerns only two of the counts: Count Six, for threatening physical violence in furtherance of a plan to extort, and Count Seven, for using, carrying, and possessing a firearm to commit a crime of violence. These counts involve an incident in a Walgreens parking lot, as described in the testimony of two cooperating witnesses, Firuz Juraev and Jasur Kamolov. Both witnesses described how defendant held a firearm as he threatened Kamolov, in part because one of Kamolov's friends owed defendant money.

Juraev testified first. He reported that, inside a car in the parking lot, defendant "pulled out a gun" and told Kamolov, "I'm going to shoot." Both were "frustrated," but after some discussion, they eventually calmed down. Kamolov then picked up the gun and remarked, curiously, "Oh, wow, where did you guys get this from?" "That's it," Juraev testified. "Then they agreed that, you known, that they will pay the money and that – [Kamolov] left first or that – and then I left after, I don't remember."

Later in the trial, Kamolov testified about those same events. He recalled that he drove to Walgreens and got in a car, but Juraev was not there – it was just him, defendant, and another individual. "Take that out," defendant told the individual, who promptly went to the trunk and retrieved a bag. Defendant took the bag, pulled out a gun, and held it in his hand. Defendant then said to Kamolov, "Now you're going to pay for it." But Kamolov managed to defuse the situation, assuring defendant that he and his friend would pay back the money. Kamolov also recalled inquiring about the gun, saying "Oh, can I see it?" Defendant gave him the gun for two or three seconds, and he then gave it back to defendant. "It was interesting," Kamolov testified. "It was the first time I had seen a gun."

Seizing on the inconsistencies, as well as the strange nature of the events these witnesses reported, defendant maintains that Juraev, Kamolov, or both committed perjury. The conviction "rested squarely on the testimony by [these] two co-conspirators," defendant contends, and the contradictions fatally undermine that testimony. Defendant thus maintains that the Court must either enter a judgment of acquittal or grant him a new trial.

Rule 29(c) of the Federal Rules of Criminal Procedure provides for judgments of acquittal after a jury verdict. A court may enter such a judgment "only when there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt."

United States v. White, No. 20-2051, 2021 WL 3354983, at *5 (2d Cir. Aug. 3, 2021) (quoting another source). "To succeed on his challenges regarding sufficiency [defendant] carries a heavy burden, and must show that when viewing the evidence in its totality, in a light most favorable to the government, and drawing all inferences in favor of the prosecution, no rational trier of fact could have found him guilty." United States v. Irving, 452 F.3d 110, 117 (2d Cir. 2006).

Similarly, Rule 33(a) of the Federal Rules of Criminal Procedure allows a court to "vacate any judgment and grant a new trial if the interest of justice so requires." A defendant "bears the burden of proving that he is entitled to a new trial," and a court "must find that there is a real concern that an innocent person may have been convicted." United States v. McCourty, 562 F.3d 458, 475 (2d Cir. 2009) (quoting another source). "Because the courts generally must defer to the jury's resolution of conflicting evidence and assessment of witness credibility, it is only where exceptional circumstances can be demonstrated that the trial judge may intrude upon the jury function of credibility assessment." Id. at 475-76 (alteration adopted) (quoting another source).

Under both these standards, defendant has failed to carry his burden. To be sure, Juraev and Kamolov disagreed on one large issue – whether Juraev was in the car – and their testimony on another issue – defendant's decision to let Kamolov hold the gun right after threatening Kamolov – sounds rather strange indeed. But these issues are not so grave as to justify a judgment of acquittal or a new trial. The testimony is not "patently incredible," nor does it "def[y] physical realities." United States v. Sanchez, 969 F.2d 1409, 1414 (2d Cir. 1992) (citing these "exceptional circumstances"). Plus, the "rejection of all or part of the testimony of a witness or witnesses does not automatically entitle a defendant to a new trial," as "[t]he test is whether it would be a manifest injustice to let the guilty verdict stand." Id. (quoting another

source); see also United States v. Truman, 688 F.3d 129, 140 (2d Cir. 2012) (applying a similar rule to a motion for judgment of acquittal).

There is no manifest injustice here. The conviction on Counts Six and Seven depends, in large part, on a single factual issue: whether defendant threatened Kamolov with a gun in the Walgreens parking lot. And on that issue, the two witnesses were largely consistent. Both testified that defendant took out a gun, held it in his hand, and made various threatening statements to Kamolov. Also, as the government notes, the testimony is consistent in several other respects, including the location of the meeting, defendant's anger and frustration toward Kamolov, and defendant and Kamolov's respective positions in the car. Therefore, the inconsistencies do not undermine the key elements of the offenses. See 18 U.S.C. § 924(c) (Count Seven); id. § 1951 (Count Six).

Finally, defense counsel appropriately emphasized the inconsistencies on cross-examination and in his closing statement. In these circumstances, the jury is generally entitled to "weigh the evidence and decide the credibility issues for itself," even when the witnesses' testimony is inconsistent. United States v. Josephberg, 562 F.3d 478, 494 (2d Cir. 2009) (alteration adopted) (quoting another source); see also United States v. Mercedes, 771 F. App'x 73, 74 (2d Cir. 2019) (summary order). Here, therefore, it was "the province of the jury and not of the court to determine whether a witness who may have been inaccurate, contradictory and even untruthful in some respects was nonetheless entirely credible in the essentials of his testimony." United States v. O'Connor, 650 F.3d 839, 855 (2d Cir. 2011).

Because defendant has failed to meet his burden, the motion for a judgment of acquittal or for a new trial [268] is denied.

SO ORDERED.

Digitally signed by
Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
August 24, 2021