No. _____

In the Supreme Court of the United States

TAWSIF MOHAMMED TAJWAR,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a determinative response by the trial court to a jury question posed during deliberation regarding a question of fact results in prejudice to a defendant, violating the defendant's Sixth Amendment right to a fair trial.

Whether the government's suppression of direct evidence of a defendant's mental state results in prejudice, requiring reversal of a conviction.

Whether the cumulative effect of these errors resulted in a prejudice that warrants reversal of the petitioner's conviction.

RELATED PROCEEDINGS

United States District Court (E.D. Ky.):

United States v. Tawsif Mohammed Tajwar,
Crim. No. 22-092, Eastern District of Kentucky (April 13, 2023)
(denials of oral motion for mistrial and renewed motion for mistrial).

Crim. No. 22-092, Eastern District of Kentucky (May 17, 2023)
(memorandum opinion and order denying motion for mistrial and post-conviction motion for new trial).

United States Court of Appeals (6th Cir.):

Tawsif Tajwar v. United States,
No. 23-5711 (February 24, 2025)
(opinion upholding conviction).

No. 23-5711 (March 28, 2025)
(order denying petition for rehearing en banc).

Luis Lara-Garcia,
No. 23-5735 (February 24, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Tawsif Mohammed Tajwar respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 2a-18a) is unreported but is available at 2025 U.S. App. LEXIS 4439 (6th Cir., Feb. 24, 2025). The opinion of the district court (App., *infra*, 20a-42a) is not reported but is available at 2023 U.S. Dist. LEXIS 86384 (E.D. Ky. May 17, 2023). The district court's denial of the petitioner's

oral motion and renewed motion for mistrial are made a part of the record pursuant to the trial transcript.

JURISDICTION

The judgment of the court of appeals was entered on February 24, 2025. A petition for rehearing was denied on March 28, 2025 (App., *infra*, 44a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> 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 offence to be twice put 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.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT

The petitioner, Tawsif Mohammed Tajwar, was one of eleven individuals named in a seven-count indictment, being charged on two of the counts – Conspiracy

to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h); and Money Laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i). He was tried on these offenses with co-defendants Claudio Everardo Cabrera, Jr. and Ruvi Beaney Pacheco. All were convicted. App., *infra*, 4a.

A. Statement of Facts

i. Background

Through his business ICASH4PHONES, the petitioner bought and sold used cellular phones, with one of his customers being LCDOne, a China-based company. In working with this company, the petitioner communicated solely with employee Cristal Peng ("Peng"). App., *infra*, 3a. On January 10, 2022, the petitioner shipped a significant number of phones, expecting payment of the agreed upon price of $125,000.00 a few days thereafter. However, having received no payment by January 15, 2022, the petitioner contacted Peng to establish when and how he was to be paid. After exchanging messages, the petitioner agreed to travel to Lexington, Kentucky to receive a cash payment. On January 22, 2022, the petitioner met Tyler Raylee Ipock – an individual unknown to the petitioner – at a gas station located on Versailles Road. He was given $191,000.00 in cash. App., *infra*, 3a.

Having observed the exchange, law enforcement followed the petitioner and initiated a traffic stop. A plain view search of the vehicle showed the currency retrieved to be located behind the driver's seat. App., *infra*, 3a. An open-air sniff of the vehicle was also conducted, with the canine "alert[ing] to the vehicle" on the passenger side door. R. 1057 (April 11, 2023).

In addition to these searches, the petitioner spoke with law enforcement on two occasions. He first spoke with Kentucky State Police Trooper Jack Gabriel ("Trooper Gabriel"). In the audio and video recorded interview the petitioner is heard explaining his business to Trooper Gabriel and the circumstances of his trip to Lexington, Kentucky. When informed of the canine's alert to his vehicle, the petitioner adamantly denies any knowledge of or involvement with narcotics handling. App., *infra*, 4a; Gov't Exh. 13 (explaining that "he came here to pick [] up" payment owed to him and did not "know that there is any drugs related to it or anything.").

The petitioner then spoke with Task Force Officer Elisha Morris ("TFO Morris"), at which time he permitted TFO Morris to review messages exchanged with Peng. The exchanges were captured via video recording on TFO Morris' cellular phone. App., *infra*, 4a. Though discussion between the petitioner and TFO Morris continued throughout this recording, there was no audio. Instead, statements made during the interview were memorialized in a Drug Enforcement Agency report, completed by TFO Morris on January 31, 2022. R. 1157 (April 11, 2023). According to this report, when the petitioner was questioned about the source of the money, he "kind of hem-hawed, and then he said, 'It probably came from drug proceeds.'" R. 1135 (April 11, 2023).

ii. Jury Deliberations

At trial in this matter, the jury submitted two questions during deliberations, the first of which occurred at 5:29 p.m., approximately four and a half hours after deliberations began. It read as follows:

> Was there a Drug Dog/K-9 unit utilized in the airport search of Cabrera & Pachecos Luggage? In Relation to TFO Hart's testimony on February 2, 2021.

R. 733. In discussing how to respond, the government properly stated that the jury must be instructed to "refer to their memories, their notes of the testimony," as "the Court can[not] specifically answer the question." R. 1216 (April 12, 2023). Defense counsel concurred. R. 1216-17 (April 12, 2023).

Rejecting this position, the district court instead instructed the jury as follows:

> Members of the jury, in response to your question, testimony was presented by TFO Officer Hart that a drug dog/K-9 unit was used in the airport search of Defendants Cabrera's and Pacheco's luggage on February 2nd, 2021.

R. 1217. The instruction was not read in open court, as the district court did not find it "necessary to bring the jury back into the courtroom to provide that response." *Id.* Instead, the written response was submitted to the jury at 5:33 p.m., with an accompanying written cautionary instruction:

> Please keep in mind that you should consider the testimony on the issue you raised, together with all other testimony and evidence presented in the case. Do not consider it by itself, out of context. Consider all of the evidence together as a whole.

R. 829[1].

[1] The petitioner was unaware that a cautionary instruction was given until provided a copy of the trial court's written response the following day, as the response read to counsel at trial included only the affirmative response to the jury question. *See* R. 1217 (April 12, 2023).

A second jury question was submitted at 5:48 p.m., requesting clarification on the fourth element of the money laundering offense as well as a request to retire from deliberations for the day, *to wit*:

> Please Define #(4)
> On Page 23 of Jury Instruction.
>
> Could we please retire for the evening
> and Return at 8 am.?

R. 734. Granting this request, the jury was returned to the courtroom at which time and the district court *sua sponte* gave a "further" cautionary instruction in open court:

> In response to the answer previously given to your question, please keep in mind that you should consider the testimony on the issue you raised together with all other testimony and evidence presented in this case. Do not consider it by itself, out of context. Consider all the evidence together as a whole.

R. 1219 (April 12, 2023).

The petitioner moved for a mistrial, citing the trial court's error in establishing a question of fact in its response to the juror question as well as the cautionary instruction given *sua sponte*. The motion was denied. R. 1227-29 (April 13, 2023). The petitioner renewed the motion after his conviction. It was again denied. R. 1231 (April 13, 2023).

iii. Discovery of Brady Material

During cross-examination, TFO Morris was questioned about the video recording used to preserve the communication between the petitioner and Peng and, specifically, its lack of audio. On further inquiry, TFO Morris admitted to his possible possession of a copy of the recording which included audio. Pursuant to post-trial discovery requests made, a copy of the recording which included video and audio was

produced. In direct contrast to the testimony of TFO Morris, the audio confirmed the petitioner's continued denial as to the source of the money received:

> No. That's the thing. That's why I was like when he told me like I'm, I told him, like, hey, I have my doubt about the money, too. Like, I don't know where it is from.

R. 240. The petitioner subsequently moved for a new trial based on this discovery. The motion was denied. App, *infra*, 34a – 38a.

B. Procedural History

The petitioner appealed his convictions to the Sixth Circuit Court of Appeals claiming multiple errors, including challenging the district court's response to the juror question and the denial of a new trial. Citing the petitioner's failure to establish prejudice as a universal basis, his convictions were affirmed. App., *infra*, 2a – 17a.

REASONS FOR GRANTING THE PETITION

This case presents the most extreme of circumstances in which violations of not one, but two, constitutionally protected rights of the petitioner have been improperly upheld. First, the district court's establishment of fact and the resulting prejudice is a matter of first impression. This is an issue with minimal consideration by lower courts, with varying results based on loosely defined analyses. To prevent further injustice, as has occurred in this case, this Court must establish a concise standard under which a determination of fact is reviewed, whether such constitutes an improper invasion of the jury's province, and whether prejudice resulted therefrom.

Furthermore, the need for review of the Sixth Circuit's decision is nothing short of compelling as it is in direct conflict with long-established precedent of this Court, other court of appeals as well as the Sixth Circuit's own precedent. Exercise of this Court's supervisory power is not simply warranted but obligatory to prevent the eroding of law established to strengthen and guard an individual's constitutional right to due process of law. In addition, the Sixth Circuit's failure to consider the cumulative effect of the admitted errors is such a gross and stark departure from "accepted and usual course of judicial proceedings," review by this Court is warranted. SUP. CT. R. 10(a).

A. To avoid further erosion of the right to a fair trial and ensure cohesiveness of circuit opinions, a standard of review under which the prejudicial invasion of the jury's province must be established.

i. The petitioner was prejudiced by the district court's improper establishment of a question of fact.

Case law discussing the scope of inquiry permitted into jury deliberations is limited. In *Pena-Rodriguez v. Colorado*, 580 U.S. 206 (2017), the subject was reviewed in the context of racial discrimination. Though a narrow exception to the no-impeachment rule was established, this Court reaffirmed the "'long-recognized and very substantial concerns' supporting 'the protection of jury deliberations from intrusive inquiry'" to ensure "finality of the process," maintain "jurors' willingness to return an unpopular verdict," and protect "the community's trust in a system that relies on the decisions of laypeople." *Id.* at 220 (citing *Tanner v. United States*, 483 U.S. 107, 127 (1987)). The specifications of this limited inquiry are established in Fed. R. Evid. 606, which prohibits a juror from "testify[ing] about any statement made or

incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment." Fed. R. Evid. 606(b). Consequently, discussions during deliberations, *e.g.* the evidence relied on to reach the verdict, the weight and consideration given to evidence, etc., remain unknown post-conviction. As such, courts have cautioned as to the manner in which a district court should respond to a juror question to avoid the "[u]ndue emphasis of particular testimony[.]" *United States v. Hernandez*, 27 F.3d 1403, 1408 (9th Cir. 1994) (overturning defendant's conviction due the district court's error in providing a transcript of a witness' testimony to jury for review during deliberation).

As appropriately recognized by this Court, "[i]n a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." *Quercia v. United States*, 289 U.S. 466, 469 (1933). "'The influence of the trial judge on the jury is necessarily and properly of great weight,' and jurors are ever watchful of the words that fall from him." *Bollenbach v. United States*, 326 U.S. 607, 612 (1946) (citing *Starr v. United States*, 153 U.S. 614, 626 (1894)). This is particularly true in criminal trials, when "the judge's last word is apt to be the decisive word." *Id.* As such, protecting the jury's designation as trier of fact is paramount and most often highlighted in circumstances such as the immediate, when the district court has the "difficult task" of responding to jury questions. *United States v. Davis*, 970 F.3d 650, 662 (6th Cir. 2020). Most often, "[i]f the jury asks a question about the facts,"

reviewing courts have deemed it best practice to "instruct the jury to 'rely on its own recollection' of the evidence so as not to bias its decisionmaking." *Id.* (citing *United States v. McClendon*, 362 F. App'x 475, 483 (6th Cir. 2010)). At the trial of the petitioner, this did not occur. Instead, in responding to the first jury question submitted, the district court improperly made a factual determination. This was acknowledged by the Sixth Circuit in its opinion:

> During deliberations, the jury submitted a question about the trial testimony of a DEA agent. The jury asked whether the agent testified that the police used a drug dog to search Tajwar's co-defendants at an airport in February 2021. The district court answered the question in the affirmative.

App., *infra*, 10a – 11a. Despite this finding, the conviction was upheld, incorrectly concluding that the petitioner was not prejudiced by the error.

The circumstances of this matter are highly analogous to those in *United States v. Rivera-Santiago*, 107 F.3d 960 (1st Cir. 1997). In this precedent, the jury posed four questions during deliberations to which the court responded. The last of these questions requested clarification on an issue of fact: "if there were any signs of flashing lights from the suspect aircraft and suspect vessel[.]" In response, the court read an extremely limited portion of the testimony of a government witness to the jury. *Id.* 964-65. Upon review, the appellate court determined that the "trial judge usurped the jury's factfinding role as to the subject matter of that question, and, in so doing deprived the defendants of their right to trial by jury." *Id.* at 965. This determination was made on several bases.

First, the question was posed by the jury with the intended goal of "clarify[ing] doubts" as to specific evidence relevant to an issue "central both to the government's and the defendants' theories of the case." The court found that, in responding to the question as the court did, "the trial judge culled the evidence" in a manner "effectively determine[ing] the outcome of how the jurors would resolve their doubts" as to this fact "since they were directed to only part of the evidence concerning lights. . . instead of being instructed to consider and weigh all of the evidence relating to that issue adduced at trial." This prejudicially "tipped the scales in favor of the government's theory." *Id.* Despite there being "significant circumstantial evidence" of the defendant's guilt, the First Circuit found that

> in view[ing] the context in which the fourth question was asked, the significance of the issue raised by that question to the outcome of the case, the response that was given, and the context in which the response was given, there is a reasonable probability that the error at issue influenced the jury in reaching its verdicts in this case.

Id. at 968. As a result, the "verdicts [could not] stand."

In vacating the defendants convictions, the First Circuit properly recognized that in reading a selected portion of the trial testimony, the court "suggested to the jury that this testimony would provide 'the' answer to the jury's question" with the resulting "effect of both encouraging the jury to believe [the witness] and discouraging the jury from considering and possibly crediting alternative accounts of the events surrounding the airdrop." *Id.* at 965-66. In the petitioner's case, though the juror note did not include an explicit statement of seeking clarification, confirmation of an impasse during deliberations is inherent in that the question was posed. As such, in

responding as it did, the district court more than "culled the evidence" and improperly "plac[ed] his imprimatur on the facts" related to a significant issue highlighted at trial – the government's failure to prove beyond a reasonable doubt that the money originated from unlawful conduct. *Id.* at 965-66.

Moreover, the reality that this response "determined the outcome of how the jurors would resolve" the dispute is evidenced by the quick submission of a second jury question requesting clarification as to the fourth element of the offense. *Id.* at 967. Clearly, the district court's confirmation of the subject testimony settled a dispute as to one of the proceeding elements. As such, the effect of this error on the petitioner's substantial rights, "demonstrate[es] prejudice (or materiality)" of a more than "reasonable probability that, but for [the error] claimed, the result of the proceeding would be different." *United States v. Dominguez Benitez*, 542 U.S. 74, 81 (2004) (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985).

The fact that the question concerned evidence offered against the co-defendants does not cure the prejudice. The facts established by the district court were relevant and pertinent to the petitioner's defense in challenging the sufficiency of the government's proof that "the financial transaction involved property that represented the proceeds of drug trafficking." R. 765. A canine unit was employed, and positively alerted, in the February 2021 search of the co-defendants' luggage as well as the January 2022 traffic stop of the petitioner. While evidence of the petitioner's guilt was slim, the positive alert in the co-defendants' search was accompanied by ample evidence of their knowledge and intent to promote narcotics

trafficking. As such, in its deliberation, there is a strong probability that the jury relied on the canine's positive alert in the February 2021 investigation to find that the proceeds in the petitioner's vehicle were also a product of narcotics trafficking. Undoubtedly, the district court's response established a fact, which resolved a matter of dispute amongst the jurors. *See Rogers v. United States*, 422 U.S. 35, 40 (1975) (reversing the defendant's conviction which was returned within five minutes of receiving the trial court's unilateral response to a juror question, indicating its willingness to accept a verdict of "guilty with extreme mercy," without consultation with counsel); *United States v. United States Gypsum Co.*, 438 U.S. 422, 462 (1978) ("While it is impossible to gauge what part the disputed meeting played in the jury's action of returning a verdict the following morning, this swift resolution to the issues in the face of positive prior indications of hopeless deadlock, at the very least, gives rise to serious questions in this regard."); *United States v. Padin*, 787 F.2d 1071, 1076-77 (6th Cir. 1986) (noting that the concerns related to the dangers of reading testimony to a jury during deliberation escalate when a jury reports its inability to reach a verdict). In the petitioner's case, the trial judge prejudicially "usurped the jury's factfinding role as to the subject matter of that question, and, in so doing deprived the defendants of their right to trial by jury." *Rivera-Santiago*, 107 F.3d at 965. Contrary to the findings of the Sixth Circuit, prejudice ensued resulting in a violation of the petitioner's constitutional rights. Reversal of his convictions is required.

ii. The district court's error was further compounded by additional, egregious errors which the Sixth Circuit failed to acknowledge.

The district court's improper usurpation of the jury's role was only further heightened with additional prejudicial errors, none of which were acknowledged either independently or cumulatively by the Sixth Circuit. First, the response to the question was written and sent to the jury room, without giving the supplemental instruction in open court. *See Rogers*, 422 U.S. at 39 ("Federal Rule Crim. Proc. 43 guarantees a defendant in a criminal trial the right to be present at 'every stage of the trial including the impaneling of the jury and return of the verdict. . . Cases interpreting the rule make it clear. . . that the jury's message should have been answered in open court[.]"); *United States v. Combs*, 33 F.3d 667, 670 (6th Cir. 1994) ("[i]t is error for the trial judge to respond to the jury's question other than in open court and in the presence of counsel for both sides."). In doing so, the jury was permitted the ability, "in the privacy of the jury room, unsupervised by the judge," to repeatedly contemplate what was very likely "crucial moments of testimony before reaching a guilty verdict." This results in improper, undue emphasis on testimony proffered by the government. *Hernandez*, 27 F.3d at 1408 (citing *United States v. Sacco*, 869 F.2d 499, 502 (9th Cir. 1989)).

Second, a cautionary instruction was *sua sponte* given by the district court as to its factual response on three separate occasions. The first of these was submitted with the written response to the first jury question, without the knowledge of the

petitioner[2]. The instruction was then given in open court prior to the jury's retiring from deliberations. The petitioner was not consulted prior to the instruction being given. Over the objections of the petitioner, the cautionary instruction was given once again prior to the jury returning to deliberations the following morning. The giving of this instruction constitutes error as, though a "cautionary instruction. . . might have been appropriate," the preference of a defendant in giving this instruction is paramount, as "counsel for defendants often prefer not to have the matter further emphasized by the giving of a cautionary instruction." *United States v. Carlson*, 423 F.2d 431, 439 (9th Cir. 1970). The compounded effect of these errors resulted in prejudice to the petitioner, creating a "reasonable probability that but for" the district court's errors, "the result of the proceeding would have been different." *Dominguez Benitez*, 542 U.S. at 82.

B. The Sixth Circuit's finding that petitioner was not prejudiced by the unlawful suppression of exculpatory and impeaching evidence is wholly contrary to strong, long-established law.

By virtue of upholding the conviction on the petitioner's failure to establish prejudice, alone, the Sixth Circuit acknowledges that a constitutional violation has

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[2] The written instructions provided to the jury were not filed in the record by the district but by notice of filing by the petitioner. *Cf. United States v. Sabetta*, 373 F.3d 75, 78 (1st Cir. 2004) ("In this circuit, the preferred practice for handling a jury message should include these steps: (1) the jury's communique should be reduced to writing; (2) the note should be marked as an exhibit for identification; (3) it should be shown, or read fully, to counsel; and (4) counsel should be given an opportunity to suggest an appropriate rejoinder. If the note requires *ore tenus*, the jury should then be recalled, the note read into the record or summarized by the court, the supplemental instructions given, and counsel afforded an opportunity to object at side-bar."); *Rogers*, 422 U.S. at 40-41 ("We acknowledge that the comments of the trial judge upon receiving the verdict may be said to have put petitioner's counsel on notice that the jury had communicated with the court, but the only indication that the court had communicated with the jury comes from the note itself, which the court *correctly ordered to be filed in the record, with a notation as to the time of receipt and the court's response.*") (emphasis added).

occurred, as the "evidence at issue" was "favorable to the accused, either because it was exculpatory, or because it was impeaching" and that the government suppressed said evidence. *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). However, in determining the issue of prejudice, it committed substantial error.

To determine if an individual was prejudiced by the suppression of favorable evidence, one must look to the issue of "materiality," defined as a "'reasonable probability' of a different result," which is "shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *Kyles v. Whitley*, 514 U.S. 419, 434 (1995) (citing *Bagley*, 473 U.S. at 678). As strongly emphasized by this Court, the "adjective" of "reasonable probability" as to the different result "is important," as it dictates the question which must be answered by a reviewing court:

> The question is *not* whether the defendant would more likely than not have received a different verdict with the evidence, but whether *in its absence he received a fair trial*, understood as a trial resulting in a verdict worthy of confidence.

Id. (emphasis added).

This was not the analysis applied by the Sixth Circuit. First, the appellate court employed a superficial review of the cumulative effect of the *Brady* violation, as opposed to considering the pointed exculpatory and impeaching value of the recorded statement in comparison to the government's evidence offered on the subject at issue, as properly done in *United States v. Paulus*, 952 F.3d 717 (2020). In *Paulus*, the Sixth Circuit vacated and remanded the defendant's conviction, finding that the government's suppression of a "Shields Letter" constituted a violation under *Brady v. Maryland*, 373 U.S. 83 (1963). Paulus was a cardiologist at King's Daughters

Medical Center ("KDMC"). He was indicted on the charges of healthcare fraud and making false statements relating to healthcare matters, alleged to have submitted fraudulent Medicare claims for medically unnecessary stent procedures. Post-conviction, the government disclosed the "Shields Letter," identified as correspondence from KDMC's counsel outlining the findings of independent experts retained by the hospital to review the procedures performed by Paulus and the Medicare claims paid. Though Paulus was aware that KDMC had identified 75 of his procedures to be problematic, he was unaware that the retained experts reviewed a total of 974 other procedures which were deemed "non-problematic," making the "rate of unnecessary surgeries" about 7%, "far lower than what the government experts had testified at trial." *Id.* at 722.

The Sixth Circuit found this evidence to be material, as it "tend[ed] to refute the government's evidence that Paulus systematically misdiagnosed the amount of blockage in his patients' arteries," instead possibly "hav[ing] made occasional mistakes or had occasional differences of opinion." *Id.* at 726. Furthermore, the court found that he "could have used the Shields Letter to impeach the government's witnesses by calling into question how representative their samples were." *Id.* at 727.

It is this last observation that demonstrates the clear error committed by the Sixth Circuit in denying the petitioner's *Brady* claim, with the prejudice in this matter being far greater than that in *Paulus*. In *Paulus*, the evidence discovered post-trial was impeaching in nature alone, which certainly would have been used by defense at trial to undermine the government's expert testimony. In contrast, the

evidence suppressed in the petitioner's case is *direct evidence* as to petitioner's mental state – a critical issue in the prosecution of a money laundering offense. To obtain a conviction, the government must prove beyond a reasonable doubt that an individual "*knew* that the property involved in the financial transaction represented the proceeds of some form of unlawful activity" and that the individual had the "*intent* to promote the carrying on" of a specified unlawful activity (in this case, narcotics trafficking). SIXTH CIRCUIT PATTERN JURY INSTRUCTIONS, § 11.01(1)(A), (D) (emphasis added); R. 765-66 (emphasis added). Certainly, the unadulterated statements made by the petitioner in the suppressed recording constitute exculpatory evidence, as the petitioner continually *denied* knowing that the money derived from narcotics trafficking. R. 240.

Furthermore, the only direct evidence of the petitioner's knowledge as to the source of the money received was the testimony of TFO Morris. The recorded statement is critical, impeaching evidence which would have, undoubtedly, been highly effective in undermining the government's case in the cross-examination of this key witness. *See Silva v. Brown*, 416 F.3d 980, 987 (9th Cir. 2005) (finding that the government's failure to provide the criminal history of a witness as "impeachment evidence is especially likely to be material when it impugns the testimony of a witness who is critical to the prosecution's case."). As such, not only does the recorded statement include strong exculpatory statements but challenges the veracity of the government's key witness in proving the mental state of the petitioner. *Cf. McCormick v. Parker*, 821 F.3d 1240, 1248 (10th Cir. 2016) (finding the government

violated *Brady* in failing to disclose its expert's lack of certification as she opined as to the "only physical evidence presented" and "the only witness how *provided direct evidence* to corroborate M.K.'s testimony.") (emphasis added). When applying the correct standard, "the government's suppression" of this recorded statement, without question, "undermines the confidence in the outcome" of the petitioner's trial. *Kyles*, 514 U.S. at 434 (citing *Bagley*, 473 U.S. at 678)[3].

Instead, the Sixth Circuit employed a passing review of some evidence, analyzing, instead, its sufficiency to support the conviction. To do so was error. As established in *Kyles*, the analysis of materiality is

> not a sufficiency of the evidence test. A defendant need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict. The possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict. One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.

Id. at 434-35. The evidence of the petitioner's guilt admitted was scant, being limited to the circumstantial evidence identified in the Sixth Circuit's opinion. App., *infra.* 6a – 7a. As such, the materiality of the recorded statement is clear, as it directly

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[3] *Cf. United States v. Price*, 566 F.3d 900, 914 (9th Cir. 2009) (government's failure to disclose a witness' past criminal conduct constituted a *Brady* violation as his testimony "firmly established the defendant's guilt and rendered his ability to undermine other aspects of the government's case of little consequence." If the evidence had been made available to the defendant and used at trial, "there is a reasonable probability that the withheld evidence would have altered at least one juror's assessment" of the defendant's possession of the firearm.) (citing *Cone v. Bell*, 556 U.S. 449, 452 (2009)); *Conley v. United States*, 415 F.3d 183, 191 (1st Cir. 2005) (government violated *Brady* in failing to produce a FBI memorandum which showed that hypnosis was used on the key witness to assist in his recollection of the events, stripping the defendant of his ability to impeach the witness' "ability to recall.").

undermined the proof considered by the jury. *See Floyd v. Vannoy*, 894 F.3d 143, 167 (5th Cir. 2018) ("Where the proof on which a conviction was based was thin to begin with, the Supreme Court has been clear that withheld evidence undermining proof is material."). Contrary to established precedent, the Sixth Circuit failed to consider the limited circumstantial evidence in conjunction with the *direct* evidence suppressed. Furthermore, it failed to consider that such evidence was relevant to *two* elements the government was required to prove – the petitioner's knowledge of the source of the funds *and* the petitioner's intent to promote the underlying narcotics trafficking. Such a determination was not only error but wholly contrary to the strong and well-established law protecting an individual's right to a fair trial and to adequately defend allegations levied against them. In applying the proper standard, the prejudicial effect of government's suppression of the recorded statement cannot be unquestioned[4].

C. The Sixth Circuit acted in direct contradiction to established precedent in failing to consider the cumulative effect of the district court's establishment of fact and the *Brady* violation.

The cumulative error doctrine recognizes that "[t]he cumulative effect of errors that are harmless by themselves can be so prejudicial as to warrant a new trial." *United States v. Sypher*, 64 F.3d 622, 628 (6th Cir. 2012). Reversal of a conviction is

[4] This ruling is in stark contrast to the Sixth Circuit's decision in *United States v. Taylor*, 127 F.4th 1008 (6th Cir. 2025), rendered just seventeen days prior to the opinion in the petitioner's appeal. In that case, the conviction of the defendant was overturned, finding that the district court's limitation of the cross-examination of the government's key witness was prejudicial. As the witness' testimony was "central to the prosecution," barring cross-examination on the witness' "bias and motive for testifying" as to "potential benefits" gained in the resolution of his own criminal issues was "not harmless" error. Based on this sole violation of the Confrontation Clause the defendant's conviction was reversed and the matter remanded for a new trial. *Id.* at 1018.

warranted when the combined effect of the errors "deprived [the defendant] of a trial consistent with constitutional guarantees of due process." *United States v. Hernandez*, 227 F.3d 686, 697 (6th Cir. 2000).

In failing to consider the cumulative effect of these errors, the Sixth Circuit "far departed from the accepted and usual course of judicial proceedings," warranting this Court's review to reverse the grave miscarriage of justice which has occurred. In its opinion, the Sixth Circuit readily acknowledged the *Brady* violation and the district court's conduct as *error*. In denying reversal of both claims solely on the basis of *lack of prejudice*, its refusal to analyze the cumulative effect of these errors is inexplicable and cannot be excused. In such circumstances, a cumulative error analysis is necessary and must be mandated. Undoubtedly, the district court in this case "produce[d] such a trial setting that [was so] fundamentally unfair" the petitioner was "depriv[ed] of [his] due process." *United States v. Trujillo*, 376 F.3d 593, 614 (6th Cir. 2004). A new trial is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 26, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 23-5711/5735

UNITES STATES OF AMERICA,
Plaintiff-Appellee

v.

TAWSIF TAJWAR (23-5711);
LUIS LARA-GARCIA (23-575),
Defendants-Appellants

Filed: February 24, 2025

NOT RECOMMENDED FOR PUBLICATION
File Name: 25a0100n.06

Nos. 23-5711/5735

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TAWSIF TAJWAR (23-5711); LUIS LARA-GARCIA (23-5735), Defendants-Appellants, v. UNITED STATES OF AMERICA, Plaintiff-Appellee.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY OPINION

Before: MURPHY, DAVIS, and BLOOMEKATZ, Circuit Judges.

BLOOMEKATZ, Circuit Judge. The government charged Tawsif Tajwar and Luis Lara-Garcia for their respective roles in a large-scale drug trafficking and money laundering operation. Lara-Garcia pleaded guilty to his charges, while Tajwar went to trial and was convicted by a jury. Lara-Garcia now appeals his sentence, and Tajwar appeals both his sentence and conviction. We affirm.

BACKGROUND[1]

In 2020, law enforcement began investigating a money laundering operation out of central Kentucky. An undercover DEA agent, posing as a money launderer, received a contract to help an individual named Demarkus Nemetz with laundering transactions. During a meeting, the agent offered Nemetz a money counter, which Nemetz took and began using later. The DEA had equipped the money counter with GPS capabilities, which allowed law enforcement to uncover a

[1] In light of Lara-Garcia's plea agreement and Tajwar's jury verdict, we construe the facts in favor of the government. *See United States v. Tackett*, 113 F.3d 603, 605 n.1 (6th Cir. 1997).

larger drug trafficking and money laundering conspiracy. Two year later, the effort culminated in the indictment of eleven co-conspirators.

The investigation identified Luis Lara-Garcia as the conspiracy's leader. Lara-Garcia's drug-related operations centered around a stash house used for drug storage, and a barbershop used for both storage and distribution. In 2022, DEA agents raided both locations, seizing large amounts of cash from the barbershop and significant quantities of fentanyl and cocaine from the stash house.

Aside from drug trafficking, the organization ran a money laundering scheme to transfer drug proceeds from the United States to Mexico. The scheme often involved the delivery of bulk cash to couriers, hidden in items like gift bags. The couriers would then help launder the drug proceeds, including through various seemingly legitimate trade transactions.

Tawsif Tajwar acted as a courier, collecting bulk cash in the United States and using it to purchase electronics. He then shipped those electronics to his contact in Hong Kong, Cristal Peng. He made these transactions through his front business, iCash4Phones.

In January 2022, law enforcement discovered Tajwar's role while conducting surveillance on Lara-Garcia. They observed Lara-Garcia leave his residence with two gift bags, which typically signified proceeds for money laundering. Law enforcement followed Lara-Garcia as he drove to a parking lot with a co-conspirator, Tyler Ipock. There, they observed Ipock walk over to Tajwar's van and hand Tajwar the gift bags.

Following this exchange, law enforcement trailed Tajwar and conducted a traffic stop. Tajwar denied consent to search, so an officer deployed a drug dog for an open-air sniff. The dog alerted to narcotics odor, leading to a search of Tajwar's vehicle. The search uncovered the two gift bags containing nearly $200,000 in cash and a gun in the backseat of the vehicle.

Officer Jack Gabriel, and then Officer Elisha Morris, each interviewed Tajwar separately at the scene. Tajwar told the officers that he owned an electronics business in Michigan and had driven to Kentucky to collect payment for cellphones he had shipped to Hong Kong. When asked how many phones he had sold or how much money he had received, Tajwar did not provide clear answers. During his conversation with Officer Gabriel, Tajwar said that the person who gave him the money "was shady" and the money seemed "illegal." Interview Tr., R. 248-1, PageID 1306, 1313. When asked about the gun, he said he had brought it with him for protection.

Tajwar also showed Officer Morris his text messages, and Officer Morris videotaped the messages as Tajwar scrolled through them. The messages revealed that Tajwar had offered to pick up cash in various locations across the country in a group chat with Peng. The messages also showed Peng warning Tajwar about police surveillance and instructing him to be "careful."

In August 2022, a federal grand jury indicted Lara-Garcia and Tajwar, alongside others. The government charged Lara-Garcia with conspiracy to distribute fentanyl and cocaine, 21 U.S.C. § 846, possession with intent to distribute fentanyl or cocaine, *id.* § 841(a)(1), possession of a firearm by an alien, 18 U.S.C. § 922(g)(5)(A), conspiracy to commit money laundering, *id.* § 1956(h), and illegal re-entry into the United States, 8 U.S.C. § 1326(a). He pleaded guilty and was sentenced to 372 months' imprisonment. The government charged Tajwar with conspiracy to commit money laundering, 18 U.S.C. § 1956(h), and promotional money laundering, *id.* § 1956(a)(1)(A)(i). Tajwar proceeded to trial with two co-defendants, was convicted of both counts, and received a sentence of 90 months' imprisonment. Tajwar now appeals his sentence and conviction, while Lara-Garcia appeals his sentence.

ANALYSIS

Tajwar and Lara-Garcia present different challenges on appeal. We address each individual's claims in turn.

I. TAJWAR

On appeal, Tajwar challenges his conviction and sentence on a number of grounds. Many of his arguments, however, are contradicted by either the record or established precedent. And none provide a basis for our reversal of the district court's decisions. We therefore affirm Tajwar's conviction and sentence.

A. Tajwar's *Brady* Claim

We first consider Tajwar's claim that the government impermissibly withheld exculpatory evidence. During discovery, Tajwar received a muted version of the video recording of his interview with Officer Morris. After trial, the government found an audible version of the same recording and provided it to Tajwar. Tajwar moved for a new trial under *Brady v. Maryland*, but the district court denied his motion. 373 U.S. 83 (1963). He appeals the district court's *Brady* determination, a decision we review de novo. *United States v. Fields*, 763 F.3d 443, 458 (6th Cir. 2014).

The Due Process Clause of the Fourteenth Amendment requires the government to disclose evidence that is both favorable to a criminal defendant and material to guilt or punishment. *Brady*, 373 U.S. at 86–87. To show that the government violated his *Brady* right to evidence, Tajwar must demonstrate that (1) the government withheld the evidence, either intentionally or inadvertently; (2) the evidence favors him, either because it is exculpatory or impeaching; and (3) he suffered prejudice as a result. *Jackson v. City of Cleveland*, 925 F.3d 793, 814 (6th Cir. 2019).

Tajwar maintains that the government violated *Brady* by failing to disclose the audio recording of his interview with Officer Morris. He claims that the audio shows he denied any knowledge of the funds' origins, whereas Officer Morris testified that Tajwar admitted the funds "probably came from drug proceeds." Trial Tr., R. 243, PageID 1135. Tajwar insists that Officer Morris's testimony provided the only real evidence of his knowledge and intent. And because the recording undermines that testimony, Tajwar argues its nondisclosure prejudiced him at trial.

Tajwar's *Brady* claim fails because he cannot establish prejudice. In this context, prejudice means a "reasonable probability" that the disclosure of the evidence would have changed the outcome of the trial. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (citation omitted). We assess prejudice by looking at the cumulative weight of the evidence, rather than individual evidentiary items. *Id.* at 436–37. Viewing the evidence from that lens, we cannot say the withheld recording "undermine[s] confidence in the verdict" in Tajwar's case. *Id.* at 435.

Consider the evidence the government presented. During the trial, the jury heard about Tajwar's unusual business model, which involved shipping hundreds of thousands of dollars' worth of electronics to overseas customers in exchange for bulk cash payments in the United States. The jury also heard about the unusual circumstances of the particular transaction: that Tajwar drove from Michigan to Kentucky with a gun, met a stranger at a gas station, and collected nearly $200,000 worth of cash stuffed into gift bags.

The jury also saw the text messages between Tajwar and Peng, which evinced Tajwar's intent and knowledge. For example, Tajwar told Peng he "need[ed] to pickup [cash] asap" and offered to travel to various states to do so. Trial Tr., R. 243, PageID 1146. And Peng warned Tajwar about police surveillance and told him to be "careful." *Id.*

Finally, the jury heard from Officers Morris and Gabriel about their on-the-scene interviews with Tajwar. The officers testified that Tajwar insisted the money was payment for a legitimate sale, but he couldn't answer basic questions like how many phones he had sold, how much money he had received, or who exactly had paid him. The government also presented a recording of Tajwar's interview with Officer Gabriel, during which Tajwar said the man who gave him money "was shady" and the money seemed "illegal." Interview Tr., R. 248-1, PageID 1306, 1313; *see also* Trial Tr., R. 243, PageID 1060.

Faced with all this evidence, Tajwar portrays Officer Morris's testimony as uniquely important to his money laundering conviction. He argues that Officer Morris's testimony provided the only direct evidence that he knew the funds came from drug trafficking. And he emphasizes that the audio would have impeached that testimony. But the government had to prove that Tajwar knew the money came from *some* unlawful activity, not that he knew it came from drug trafficking in particular. *See United States v. Hill*, 167 F.3d 1055, 1065–67 (6th Cir. 1999) (citing 18 U.S.C. § 1956(c)). And the government carried that burden with so much evidence beyond Officer Morris's testimony that we cannot conclude the recording undermines confidence in Tajwar's convictions. *See Strickler v. Greene*, 527 U.S. 263, 294 (1999); *Jones v. Bagley*, 696 F.3d 475, 489 (6th Cir. 2012). We therefore reject Tajwar's *Brady* claim.[2]

[2] Tajwar raises one other argument related to trial evidence. He says the district court erred by not allowing him to introduce his tax returns during his cross-examination of a witness. We review the district court's ruling for abuse of discretion. *United States v. Kettles*, 970 F.3d 637, 642 (6th Cir. 2020). We do not think the district court abused its discretion given that the witness had no knowledge of the documents Tajwar sought to introduce.

B. Sufficiency of Evidence for Tajwar's Convictions

Tajwar also claims that the evidence failed to support his convictions. A defendant who claims insufficiency of the evidence faces "a very heavy burden." *United States v. Robinson*, 99 F.4th 344, 354 (6th Cir. 2024) (citation omitted). We will sustain a conviction if, viewing the evidence in the light most favorable to the government, "any rational trier of fact could have found" the defendant guilty "beyond a reasonable doubt." *Id.* at 353 (citation omitted). We do not require the government to disprove every innocent explanation for the defendant's conduct. *Id.* And we uphold a conviction even if it rests entirely on circumstantial evidence. *Id.* at 353–54.

The jury convicted Tajwar of two crimes: conspiracy to commit money laundering, 18 U.S.C. § 1956(h), and promotional money laundering, *id.* § 1956(a)(1)(A)(i). The conspiracy charge required the government to show that Tajwar "agreed with another person to violate the substantive provisions of the money-laundering statute." *United States v. Hynes*, 467 F.3d 951, 964 (6th Cir. 2006); *see also United States v. Powell*, 847 F.3d 760, 781 (6th Cir. 2017). And the promotional money laundering charge required the government to establish that Tajwar "(1) conducted a financial transaction that involved the proceeds of unlawful activity; (2) knew the property involved was proceeds of unlawful activity; and (3) intended to promote that unlawful activity." *United States v. Warshak*, 631 F.3d 266, 317 (6th Cir. 2010) (citation omitted).

Tajwar makes several arguments against his convictions, but none are persuasive. *First*, he maintains that he lacked the requisite knowledge and intent for both of his crimes. But we think the evidence discussed above—specifically, the unusual circumstances of the transaction, Tajwar's communications with Peng, and his own admission to law enforcement—sufficiently satisfies those elements.

Second, Tajwar claims his involvement was limited to the January 2022 transaction and insists that fact defeats his conspiracy conviction. But we do not require a conspirator to be "an active participant in every phase of the conspiracy." *United States v. Munar*, 419 F. App'x 600, 604 (6th Cir. 2011). And separate from that, a conviction for conspiracy to commit money laundering does not require any "overt act[s] in furtherance of the conspiracy," let alone multiple acts, as Tajwar proposes. *Whitfield v. United States*, 543 U.S. 209, 211 (2005). So even if Tajwar's involvement was limited, that does not undermine his conspiracy conviction.

Third, Tajwar claims his conspiracy conviction cannot stand because he had no familiarity or communication with his co-defendants. But again, our case law rejects his argument. We have held that a defendant's connection to unindicted co-conspirators can sufficiently support a conspiracy charge "when the indictment refers to unknown or unnamed conspirators" and the evidence is sufficient to show that the defendant conspired with one such conspirator. *United States v. Anderson*, 76 F.3d 685, 688–89 (6th Cir. 1996); *see also United States v. Crayton*, 357 F.3d 560, 567 (6th Cir. 2004). Here, the original and superseding indictments specifically mentioned "known and unknown" co-conspirators. Indictment, R. 1, PageID 3–4; Superseding Indictment, R. 53, PageID 170. And the evidence readily demonstrated Tajwar's connection to and communications in furtherance of money laundering activities with at least one such co-conspirator, Peng.

Finally, Tajwar contends that the government failed to show that his transaction "involved the proceeds of unlawful activity," as required for his conviction for promotional money laundering. *Warshak*, 631 F.3d at 317 (citation omitted). He argues that the money may have come from "a legitimate business," namely the barbershop owned by some of his indicted co-conspirators. Tajwar Br. at 38. But Tajwar ignores that the barbershop served as a hub for the conspiracy's drug trafficking activity. The currency Tajwar received came from Lara-Garcia, a

person involved in that unlawful activity. And a search dog detected narcotics odor from Tajwar's vehicle after the currency had come into his possession. These facts, none of which Tajwar disputes, provided sufficient evidence to establish that the funds derived from unlawful activity. We therefore reject Tajwar's challenge to the sufficiency of the evidence.

C. Tajwar's Challenges to Jury Instructions

Tajwar next raises two challenges, one to the district court's jury instructions, the other to the court's response to a jury question. We review both for abuse of discretion. *United States v. Fitzgerald*, 906 F.3d 437, 449 (6th Cir. 2018). We think neither is persuasive.

First, Tajwar challenges the district court's deliberate ignorance instruction. This type of instruction applies when a defendant denies knowledge of the illegal activity, but the evidence supports a reasonable inference that the defendant deliberately avoided the truth. *See United States v. Mitchell*, 681 F.3d 867, 876 (6th Cir. 2012). That was the case here. Throughout trial, Tajwar disclaimed knowledge of the illicit nature of the funds, but the evidence suggested that he ignored clear red flags during the leadup to the transaction. For example, when Peng mentioned police surveillance of her associates, Tajwar asked no follow up questions. When Peng requested that Tajwar travel to another state to pick up huge sums from a stranger, he agreed without hesitation. And when the police asked Tajwar who had paid him and how much money he had received, he did not give a straight answer, even as he claimed the money was payment for a legitimate sale. All of this provided a reasonable basis for the jury to infer that Tajwar, if not a knowing participant, at least deliberately turned a blind eye to obvious signs of unlawful activity. The district court did not abuse its discretion in providing a deliberate ignorance instruction.

Second, Tajwar challenges the district court's response to a jury question. During deliberations, the jury submitted a question about the trial testimony of a DEA agent. The jury

asked whether the agent testified that the police used a drug dog to search Tajwar's co-defendants at an airport in February 2021. The district court answered the question in the affirmative.

Tajwar claims that the district court's response invaded the jury's province. But for us to reverse on that ground, Tajwar must first show prejudice. *See United States v. Davis*, 970 F.3d 650, 662 (6th Cir. 2020). Here, he shows none. He does not claim that the response was substantively inaccurate. *See United States v. Castle*, 625 F. App'x 279, 284 (6th Cir. 2015). Nor does he explain how the response even related to him, considering it was about a February 2021 search of his co-defendants with no apparent connection to the January 2022 transaction for which he was convicted. Tajwar instead invites us to speculate on the prejudice he may have experienced, but that falls short of the "high standard" applicable to this kind of challenge. *Id.* at 283 (citation omitted) We therefore reject Tajwar's challenge to the district court's response.

D. Tajwar's Sentencing Challenges

Tajwar also appeals various aspects of the district court's sentencing decision. His arguments are unavailing.

1. Loss Calculation

A sentencing court can increase the base offense level for money laundering based on the amount of "loss" attributable to the defendant. *United States v. Prince*, 214 F.3d 740, 769 (6th Cir. 2000). To make this calculation, the court may consider the defendant's "[r]elevant conduct," which includes all acts that fall "within the scope of the jointly undertaken criminal activity." U.S.S.G. § 1B1.3; *United States v. Iossifov*, 45 F.4th 899, 924 (6th Cir. 2022). "The government must prove the loss amount attributable to a defendant by a preponderance of the evidence." *Iossifov*, 45 F.4th at 925. The sentencing court must then make a factual finding "concerning the

amount of loss" for which the defendant is accountable. *Prince*, 214 F.3d at 769. We review that factual finding for clear error. *Id.*

In this case, the district court treated as "relevant conduct" two previous cash pickups by Tajwar in December 2021. The funds Tajwar received during those pickups, combined with the funds he picked up in January 2022, brought the total amount of loss attributable to him to between $250,000 and $550,000, resulting in a 12-level increase in his base offense level.

Tajwar argues that "relevant conduct" cannot encompass unindicted activity. But we have held that "relevant conduct" can include activity not specified by the indictment, so long as it was part of the same "common scheme or plan" as the underlying offense. *United States v. Skouteris*, 51 F.4th 658, 672 (6th Cir. 2022). At sentencing, the government presented evidence that in December 2021, Tajwar collected large sums of cash in Ohio without delivering any electronics. The district court found that those transactions fell within the "nature and scope" of the conspiracy: the December 2021 and January 2022 transactions all involved the collection of cash without a corresponding sale of electronics. Sent'g Tr., R. 377, PageID 2322–23. The court therefore treated the December 2021 pickups as "relevant conduct" in its loss calculation. In light of the evidence presented, that conclusion was not erroneous.

2. Section 2S1.1(b) Enhancement

Tajwar also appeals the district court's application of a six-level enhancement under U.S.S.G. § 2S1.1. That Guidelines provision applies when a defendant "knew or believed that any of the laundered funds were the proceeds of, or were intended to promote . . . an offense involving the manufacture, importation, or distribution of a controlled substance." U.S.S.G. § 2S1.1(b)(1). We review factual determinations underlying the application of this enhancement for clear error. *See United States v. Macias Martinez*, 797 F. App'x 974, 979 (6th Cir. 2020).

The district court did not clearly err with respect to this enhancement. At sentencing, Officer Morris testified that Tajwar admitted that the funds he received "probably [came] from drug proceeds." Sent'g Tr., R. 377, PageID 2285. Tajwar countered that the audio recording disclosed after trial contradicted Officer Morris's account. But Officer Morris responded that he interacted with Tajwar for nearly two hours, and that the seven-minute recording failed to capture later questioning during which Tajwar made his admission. In addition to Officer Morris's testimony, the district court heard other evidence about Tajwar's involvement, including his brother's statement to law enforcement that Tajwar traveled to pick up cash "about once a week." Sent'g Tr., R. 377, PageID 2280, 2302–03. Looking at the context of all the evidence, the district court ultimately found that Tajwar knew or believed that the laundered funds consisted of drug proceeds. We cannot say that the district court clearly erred, so we reject Tajwar's challenge to this enhancement.

3. Mitigating Role Reduction

Finally, Tajwar argues that the district court erred in denying him a mitigating role reduction. Under U.S.S.G. § 3B1.2, Tajwar would receive a four-level decrease in his offense level if he was a "minimal" participant in the criminal activity, and a two-level decrease if he was a "minor" participant. Tajwar bore the burden of proving his entitlement to a role reduction by a preponderance of the evidence. *See United States v. Guerrero*, 76 F.4th 519, 533 (6th Cir. 2023).

In determining whether this reduction applies, district courts focus on the defendant's role in the conduct underlying the defendant's base offense level. *United States v. Roberts*, 223 F.3d 377, 380 (6th Cir. 2000). The reduction applies only if the defendant's role in that conduct rendered him "substantially less culpable than the average participant." *Guerrero*, 76 F.4th at 533. And that

depends on factors like the defendant's understanding of the crime, as well as planning and decision-making authority. *See* U.S.S.G. § 3B1.2, cmt. n.3(C).

Tajwar focuses on his role in the broader conspiracy, arguing that he played a small part in the organization's overall activities. But Tajwar's entitlement to a role reduction does not turn on his part in the overall conspiracy; it depends on his role in the conduct that was included in his base offense level. *Roberts*, 223 F.3d at 380. Here, the district court looked only to Tajwar's transactions in December 2021 and January 2022 in calculating his base offense level. And Tajwar does not argue that he played a minor or minimal role in any of those transactions. His argument therefore fails.

II. LARA-GARCIA

We now turn to Lara-Garcia's claims. Lara-Garcia appeals his sentence, arguing that the district court improperly enhanced his offense level and ultimately imposed a substantively unreasonable sentence. We consider each argument in turn and conclude that none provides a basis for reversal.

A. Drug Premises Enhancement

Lara-Garcia appeals the district court's application of a two-level drug premises enhancement. *See* U.S.S.G. § 2D1.1(b)(12). That enhancement applies if the defendant knowingly maintained a place—such as a house or apartment—for the "purpose of manufacturing or distributing a controlled substance." *Id.*; *see also United States v. Johnson*, 737 F.3d 444, 447 (6th Cir. 2013). A defendant "maintains" such a place if he holds a "possessory interest" in (e.g., a lease or ownership interest) or otherwise controls the premises. *United States v. Taylor*, 85 F.4th 386, 389–90 (6th Cir. 2023). The government bears the burden of establishing by a preponderance of

the evidence that the enhancement applies. *United States v. Murillo-Almarez*, 602 F. App'x 307, 312 (6th Cir. 2015).

Lara-Garcia does not dispute that the government recovered significant quantities of drugs—approximately, seven kilograms of fentanyl and one-and-a-half kilograms of cocaine—from a stash house. He argues instead that the government failed to establish that he maintained the stash house because in his view, the evidence did not show that he had a possessory interest in or controlled the premises.[3]

The evidence amply supported the district court's finding that Lara-Garcia controlled the stash house. The government presented evidence that Lara-Garcia paid the apartment's rent in all but one occasion; that he had his own keys to the apartment; and that he frequented the apartment multiple times a week.

We have found similar facts sufficient to demonstrate that a defendant maintained an apartment for purposes of this enhancement. *See id.* The fact that Lara-Garcia did not formally lease the apartment does not alter that conclusion. *Id.* Nor does the fact that one of his co-conspirators, but not him, may have occasionally lived at the apartment. *Id.* We therefore reject Lara-Garcia's challenge to this enhancement.

B. Leadership Enhancement

Lara-Garcia also appeals the district court's application of a four-level leadership enhancement for his role in the drug trafficking and money laundering operations. *See* U.S.S.G § 3B1.1. This enhancement applies if the defendant served as "an organizer or leader of a criminal

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[3] Lara-Garcia's other argument, that the use of a place for storage of large quantities of drugs falls outside the scope of this enhancement, lacks merit. *See United States v. Tripplet*, 112 F.4th 428, 431 (6th Cir. 2024).

activity that involved five or more participants." *Id.* § 3B1.1(a). To determine whether a defendant acted as "an organizer or leader," district courts consider factors like the exercise of decision-making authority, the nature of participation in the offense, the degree of participation in planning or organizing the offense, and the degree of control and authority exercised over others. *See Taylor*, 85 F.4th at 390; U.S.S.G. § 3B1.1 cmt. n.4. We review the district court's factual findings on these factors for clear error. *See United States v. Khalil*, 279 F.3d 358, 370 (6th Cir. 2002).

Laura-Garcia contends that the district court improperly found that he directed the activities of others. But the government presented evidence that, in December 2020, he coordinated money deliveries to an undercover DEA agent, and then directed his co-conspirator Nemetz to make those deliveries. Similarly, in February 2022, Lara-Garcia told his brother, an indicted co-conspirator, to buy him a vehicle using drug proceeds. And he directed his brother to sell the same car a few months later. In light of this evidence, the district court did not clearly err in finding that Lara-Garcia directed the activities of "at least one accomplice." *United States v. Minter*, 80 F.4th 753, 758 (6th Cir. 2023) (citation and emphasis omitted). Lara-Garcia's challenge therefore fails.

C. Substantive Reasonableness

Finally, Lara-Garcia argues that his sentence is substantively unreasonable, meaning that it is "too long." *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). In assessing substantive reasonableness, we look to whether the district court gave reasonable weight to each of the § 3553(a) factors. *See United States v. Boucher*, 937 F.3d 702, 707 (6th Cir. 2019). We review the district court's sentencing decision for abuse of discretion. *Rayyan*, 885 F.3d at 442. And we apply a rebuttable presumption of reasonableness to a within-Guidelines sentence, like the one Lara-Garcia received. *Boucher*, 937 F.3d at 707.

Apart from reiterating his objections to his sentencing enhancements, Lara-Garcia argues that the district court failed to afford sufficient mitigating weight to his personal circumstances, including his challenging upbringing. But the sentencing transcript shows that the district court did consider Lara-Garcia's personal history and balance it against the seriousness of his offenses. Lara-Garcia effectively asks us to balance the factors differently, but that lies "beyond the scope" of our review. *United States v. Ely*, 468 F.3d 399, 404 (6th Cir. 2006). We therefore hold the district court did not abuse its discretion.

CONCLUSION

For these reasons, we affirm the district court's judgments as to both Tajwar and Lara-Garcia.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 23-5711/5735

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TAWSIF MOHAMMED TAJWAR (23-5711); LUIS FERNANDO LARA-GARCIA (23-5735),

Defendants - Appellants.

FILED
Feb 24, 2025
KELLY L. STEPHENS, Clerk

Before: MURPHY, DAVIS, and BLOOMEKATZ, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED in its entirety as to both defendants.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Criminal No. 5:22-092-DCR

UNITES STATES OF AMERICA,
Plaintiff

v.

TAWSIF MOHAMMED TAJWA; and
CLAUDIO EVERARDO CABERA, JR.,
Defendants.

Filed: May 17, 2023

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Criminal Action No. 5: 22-092-DCR
	)	
V.	)	
	)	
TAWSIF MOHAMMED TAJWAR and	)	**MEMORANDUM OPINION**
CLAUDIO EVERARDO CABERA, JR.,	)	**AND ORDER**
	)	
Defendants.	)	

*** *** *** ***

A jury convicted Defendants Tawsif Tajwar and Claudio Cabrera of one count of conspiring to launder money in violation of 18 U.S.C. § 1956(h) and one count of promotional money laundering in violation of 18 U.S.C. § 1956(a)(1)(A)(i). [Record No. 223] The Court denied motions for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure at the close of the evidence. The defendants have now filed separate motions for a judgment of acquittal or, alternatively, for a new trial. [Record Nos. 229, 230, 232] Both motions will be denied.

I. Judgment of Acquittal

A defendant seeking a judgment of acquittal "bears a very heavy burden." *United States v. Davis*, 397 F.3d 340, 344 (6th Cir. 2005) (quoting *United States v. Spearman*, 186 F.3d 743, 746 (6th Cir. 1999)). In reviewing a Rule 29 motion, the Court must determine whether, "viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *United*

States v. King, 169 F.3d 1035, 1038-39 (6th Cir. 1999) (citation and internal quotation marks omitted). "The Court does not weigh the evidence, consider witness credibility, or substitute its judgment for that of the jury[]" in making this determination. *United States v. Hendricks*, 950 F.3d 348, 352 (6th Cir. 2020).

To convict on the conspiracy count, the United States was required to prove that two or more persons conspired, or agreed, to commit the crime of money laundering and that the defendant knowingly and voluntarily joined the conspiracy. *United States v. Garcia*, 259 F. App'x 747, 750 (6th Cir. 2008). To prove the offense of promotional money laundering, the government must establish that the defendant "(1) conducted a financial transaction that involved the proceeds of unlawful activity; (2) knew the property involved was proceeds of unlawful activity; and (3) intended to promote that unlawful activity." *King*, 169 F.3d at 1039 (citation omitted).

1. Defendant Tajwar

Tajwar moves for a judgment of acquittal on both counts of his conviction. Regarding the conspiracy count (Count 4), he does not contest that the government proved that a conspiracy to commit money laundering existed. [Record No. 230-1, p. 5] Instead, he argues that the government failed to establish that he was connected to that conspiracy or that the conduct for which he was convicted "promoted the conspiracy goals." [*Id.* at p. 9] Regarding the count of promotional money laundering (Count 7), Tajwar asserts that the government failed to present evidence establishing: (1) the transaction involved property that represented the proceeds of unlawful activity, (2) he knew the property represented the proceeds of some form of unlawful activity, and (3) he acted with the intent to promote the carrying on of drug trafficking.

A. Background

The United States introduced records of Tajwar's text messages in establishing his extensive involvement in the charged conspiracy. The defendant texted several individuals, including Cristal Peng and an unidentified number, who notified him of opportunities to retrieve large sums of money. And Tajwar inquired about conducting money "pickups" in places such as Charlotte, Chicago, and New York. The text messages indicated that Tajwar requested additional pickup assignments because he was "losing customers every day." Peng notified Tajwar of an opportunity to retrieve $150,000.00 in Kentucky, and he agreed.

Tajwar claims that he participated in the pickups to receive payment for his legitimate business of trading cash for phones. But DEA Agent Troey Stout (Agent Stout) provided an alternative explanation for the defendant's actions, stating that such conspiracy participants commonly used cash to purchase electronics that are sold to drug manufacturers in China, and that the proceeds of such transactions are used to pay cartels in Mexico for their drug deliveries. Agent Stout further testified that, in exchanges of cash for phones, drug couriers like the defendant are often insulated from other conspiracy members to prevent law enforcement from identifying the source of the money involved in the exchange.

Task Force Officer Robert Hart (TFO Hart) testified that, in this case, a money counter given to DeMarcus Nemetz (a coconspirator indicted with Tajwar and who later pleaded guilty) alerted law enforcement to the need for surveillance on January 22, 2022. After initiating surveillance, TFO Hart witnessed Luis Fernando Lara-Garcia and Tyler Ipock (two other coconspirators who pleaded guilty in the case), take money from Lara-Garcia's residence and deposit it in Tajwar's vehicle. Law enforcement stopped Tajwar's car shortly after the exchange and seized the money received from Ipock.

Kentucky State Police Officer Jack Gabriel (Officer Gabriel) assisted with the traffic stop. Officer Gabriel testified that he spoke with Tajwar about his potential involvement in drug trafficking after a drug dog alerted to the odor of narcotics in the vehicle. When Officer Gabriel asked Tajwar about the source of the money found inside his car, Tajwar said on two occasions that he suspected that the money was illegal. Tajwar also stated that he did not know how much money he had received, although he received a text message stating that he would receive $191,000.00. Task Force Officer Elisha Morris (TFO Morris) testified that the defendant provided similarly evasive answers to his questions during the stop. TFO Morris reported that Tajwar claimed that he did not know how much money he had received or how many electronic items he had sold in exchange for the money, and that Tajwar thought the money might have come from an unlawful source.

The defendant's texts from January 22 reflect that he communicated with Peng and someone at an unidentified number in the minutes leading up to the pickup. The unknown number, ending in 8131 (the 8131 number), sent the defendant a bill code that Tajwar would use to verify the transaction and provided the address of the pickup. Minutes before the pickup, the 8131 number messaged Tajwar that the other party to the exchange was approaching and that he was carrying "191 files," interpreted as $191,000.00. Law enforcement later counted the money involved in the exchange, which amounted to $196,870.00.

B. Discussion

The government presented sufficient evidence to support both charges against Tajwar. The Sixth Circuit has recognized that "[t]he 'knowledge prong[s]' of the money laundering statute can be proven by direct or circumstantial evidence." *United States v. Johnson*, 26 F. App'x 441, 446 (6th Cir. 2001). And it similarly has found that "[c]ircumstantial evidence

alone is sufficient to support a conviction" for promotional money laundering, noting that "[i]t is not necessary for the evidence to exclude every reasonable hypothesis except that of guilt." *United States v. Reed*, 167 F.3d 984, 992 (6th Cir. 1999) (citation omitted).

Here, the jury was instructed that the government could prove the defendants' knowledge of the money laundering conspiracy "by facts and circumstances which lead to a conclusion that [they] knew the conspiracy's main purpose." [Record No. 222, p. 21] The instructions also provided that the government could prove a defendant's state of mind on either of the charges "indirectly from the surrounding circumstances . . . [including by] what a defendant said, what a defendant did, how a defendant acted, and any other facts or circumstances in evidence that show what was in a defendant's mind." [*Id.* at p. 16]

i. Conspiracy to Commit Money Laundering

Direct and circumstantial evidence established that Tajwar knowingly and voluntarily participated in the charged conspiracy. He messaged known and unknown individuals and offered to pick up money in various locations across the country. The 8131 number of an unindicted coconspirator advised the defendant where to pick up money from Ipock, providing real-time communication regarding Ipock's location and the approximate sum that Tajwar would receive. As the government notes, the 8131 number stated that Tajwar would receive "191 files," which approximately equaled the cash law enforcement seized from the defendant's vehicle.

As the government explains, other circumstances surrounding the defendant's interaction with Ipock further support the conclusion that he acted knowingly, including that he "traveled from Michigan to Lexington to meet a complete stranger in a parking lot to receive nearly $200,000 and that he brought a gun with him for his protection." [Record No. 247, p.

9] The defendant's equivocal behavior while being interviewed by law enforcement, not to mention his incriminating statements to Officer Gabriel, is further proof that he acted knowingly and intentionally. A reasonable jury could have easily interpreted Tajwar's messages with Peng and the 8131 number, the circumstances surrounding the money pickup, and his statements to law enforcement as proof of knowing and voluntary participation in the charged conspiracy.

The defendant's arguments to the contrary are simply wrong. First, as the United States correctly notes, it was not required to prove that Tajwar knew the identities of his coconspirators for a jury to convict him on Count 4. [Record No. 247, pp. 4-5] The indictment charges the defendant with conspiring to commit money laundering with the named coconspirators "*and with other persons, known and unknown to the Grand Jury.*" [Record No. 53, p. 4 (emphasis added)] Additionally, as the Sixth Circuit held in *United States v. Rugiero*, a lower court is not required to instruct the jury that multiple conspiracies existed when the defendant did not directly associate with all other members of the charged conspiracy. 20 F.3d 1387, 1391 (6th Cir. 1994). The court found that the government's proof that the defendant "knew of the existence of others in the charged drug conspiracy" and that he participated in "some act or portion of the conspiracy" is sufficient proof that the defendant participated in the charged conspiracy. *Id.* at 1392.

Similarly, evidence introduced during the trial of this matter demonstrated that a drug trafficking conspiracy existed, that Tajwar was aware of other members of the conspiracy, and that he participated in a portion of that conspiracy. Tajwar's meeting with Ipock and conversations with unindicted coconspirators, including Cristal Peng and the 8131 number, connected him to the conspiracy charged in the indictment.

Tajwar's next claim that he cannot be convicted on Count 4 because his "involvement in this matter begins and ends on January 22" is flatly contradicted by the evidence in the record. [Record No. 230-1, pp. 7-8] In addition to Tajwar's meeting with Ipock, the evidence demonstrated that he communicated with unindicted coconspirators on multiple occasions. His text messages seeking to assist with money pickups at various locations in the United States demonstrate that his involvement in the conspiracy extended far beyond his conduct on January 22.

Tajwar also contends that he should be acquitted on Count 4 because the government failed to establish that he received money representing the proceeds of unlawful activity. [Record No. 230-1, pp. 8-9] But again, he is incorrect. TFO Morris testified that a barbershop owned by two coconspirators was used as a front for the conspiracy's drug trafficking efforts; however, that the same barbershop was also "a legitimate business earning legitimate profits." [*Id.* at p. 8] The defendant explains that, because at least some of the barbershop's earnings were lawful, Tajwar must have received some legitimate earnings. However plausible that interpretation may be, the defendant's argument amounts to little more than an empty attempt to substitute his (or his attorney's) opinion of the evidence for that of the jury —a liberty this Court may not take when considering the present motion.

Additionally, the money laundering statute does not require that the entire property involved represent the proceeds of specified unlawful activity. *See, e.g., United States v. Nickson*, 127 F. App'x 770, 773 (6th Cir. 2005) (recognizing that if the government was required to trace funds used in a money laundering scheme on a "dollar for dollar basis," defendants could "evade sanctions by commingling illegal assets with legitimate earnings") (citing *United States v. Bencs*, 28 F.3d 555, 562 (6th Cir. 1994)); *United States v. Conner*,

1991 WL 213756, at *4 (6th Cir. 1991) (table opinion) (same); *United States v. McCoy*, No. 2:17-CR-20489, 2022 WL 507477 (E.D. Mich. Feb. 18, 2022) ("That a banking account is used for legitimate purposes as well as money laundering does not preclude a money laundering conviction."). Instead, evidence is sufficient to support a money laundering conviction if a jury can infer that "the illegally garnered funds were 'involved'" in the alleged transaction. *Nickson*, 127 F. App'x at 773 (citing 18 U.S.C. § 1956(a)(1)) (emphasis added); *see also United States v. Westine*, 1994 WL 88831, at *2 (6th Cir. 1994) (table opinion). And there is no minimum percentage requirement.

In any case, additional evidence supported the jury's conclusion that Tajwar received money representing the proceeds of unlawful activity. In addition to the evidence from the barbershop, the government presented photos from a coconspirator's stash apartment indicating that the money Tajwar received came from drug proceeds. The jury also heard from Officer Gabriel that a drug dog alerted to the presence of the odor of narcotics when officers approached the defendant's vehicle. From that evidence, a rational juror could infer that the $190,000.00 that the defendant received came from an unlawful source.

ii. Promotional Money Laundering

Tajwar also challenges his conviction for promotional money laundering. Regarding the second element, he claims that the United States did not establish that the money he received from Ipock represented the proceeds of unlawful activity. [Record No. 230-1, pp. 13-14] Similar to the conspiracy charge, the defendant suggests that the proceeds could have come from a lawful source because two of his coconspirators owned a barbershop that earned legitimate profits. [*Id.*] He cites *United States v. McDougald* in support of his claim, in which the Sixth Circuit reversed a defendant's money laundering conviction because insufficient

evidence supported that he knew the source of the proceeds involved in the charged transaction. 990 F.2d 259, 261-62 (6th Cir. 1993).

In *McDougald*, the defendant was charged with using $10,000.00 in drug proceeds to purchase a vehicle for an acquaintance who was a drug dealer. *Id.* at 261. The Sixth Circuit held that proof that the money came from a drug dealer did not necessarily establish that "all of [the drug dealer's] money is drug money or that [the $10,000.00] is drug money" because the acquaintance could have also earned money through legitimate means. *Id.* Additionally, the fact that the defendant registered the car in his own name was insufficient proof of knowledge because "[l]aundering of drug profits is not the only plausible explanation for concealing assets." *Id.* at 262.

Reliance on *McDougald* is misplaced. As with Count 4, the government was not required to trace the origin of all funds that Tajwar received to demonstrate that the alleged transaction involved the proceeds of unlawful activity. *Nickson*, 127 F. App'x at 773. Moreover, the government presented sufficient proof to support the jury's conclusion that Tajwar's coconspirators were "involved in the drug trade and that the money at issue was more likely than not a proceed of that trade." *United States v. Johnson*, 26 F. App'x 441, 447 (6th Cir. 2001). Although the proceeds could have come from legitimate barbershop activities, it is unlikely that the funds being moved came from that part of the business, given the amount of money involved and the steps taken by the coconspirators to transfer it through a third party. *Id.* at 447 (finding that evidence supported that money in laundering transaction represented drug proceeds because "if the money . . . had been from one of these other legitimate businesses . . . it is unlikely that the Defendant would have gone to great lengths to conceal its source; he would simply have deposited the money in [a codefendant's] name *ab initio*"). Additionally,

as mentioned above, a jury could have rationally and logically found that the money constituted drug proceeds in light of the photos from a coconspirator's stash apartment and because a drug dog alerted to the presence of the odor of narcotics inside Tajwar's vehicle.

And the claim that the money did not come from unlawful activity because the government failed to connect the money from the DEA's money counter to the proceeds involved in the pickup also fails. As explained during trial in response to the defendant's motion for a judgment of acquittal, the government did not track the defendants' use of the money counter to "match up dollars," but to determine when and where those involved in the conspiracy used the machine. [Record No. 243, pp. 214-15] The United States was not required to use a money counter or match the serial numbers of the dollars possessed by other codefendants to those received by Tajwar to prove that the money he received directly from co-defendants represented the proceeds of unlawful activity.

Tajwar next contends that the government failed to present evidence that he knew that the money represented drug proceeds. Tajwar acknowledges that he made statements to law enforcement indicating that he "ha[d] a feeling that that money [was] illegal," and that he "[had his] suspicion . . . [that] some kind of shady stuff [was] going on." [Record No. 230-1, p. 15] However, he claims that his statements do not constitute confessions and do not prove that he was aware of the nature of the proceeds at the time he received the cash. [*Id.*]

By claiming that his statements to law enforcement are insufficient proof of his knowledge, the defendant is, yet again, attempting to improperly substitute his judgment (or perhaps the judgment of his attorney) for that of the jury. But it is the jury's job to determine whether the defendant's statements were credible. Additionally, Tajwar seems to forget that the government was not required to present *affirmative* evidence that he knew the money

represented drug proceeds, as the jury was instructed that "no one can avoid responsibility for a crime by deliberately ignoring the obvious." [Record No. 222, p. 17] Tajwar's statements to law enforcement, the circumstances surrounding his interaction with Ipock, the positive alert from a drug dog, and his text messages to Peng could clearly lead a rational juror to conclude that he knew the unlawful nature of the money he received.

Finally, Tajwar's claim that there was no evidence that he acted with an intent to promote the carrying on of drug trafficking is equally unavailing. Tajwar argues that his messages with Peng and the 8131 number establish that he retrieved money from Ipock as payment for phones he sold previously, not to advance his drug trafficking activities. [Record No. 230-1, pp. 16-17] While Tajwar is correct that his conversations with Peng *could* lead to such a conclusion, that same conduct could also lead to a contrary conclusion that his "business" was actually a front for money laundering of illegal drug proceeds. The latter conclusion is certainly reasonable, rational, and logical, in light of Tajwar's messages that he would drive to various locations throughout the country to get cash and his statements to Officer Gabriel that he did not know how many old and/or broken cell phones he had sold or how much money he was owed from those sales to individuals in China.

2. Defendant Cabrera

Defendant Cabrera also moves for a judgment of acquittal on his conviction for conspiring to launder drug proceeds (Count 4) and for engaging in promotional money laundering (Count 8). Cabrera concedes that the United States proved the existence of a conspiracy to launder drug proceeds. [Record No. 229, p. 2] However, he argues that his conviction on the conspiracy count should be set aside because the United States did not present evidence that he knowingly and voluntarily joined the conspiracy.

Regarding Count 8, Cabrera maintains that the evidence presented during trial did not establish that he "knew that the money seized from him was the proceeds of some form of unlawful activity" or that he acted with the requisite criminal intent. [*Id.*]

A. Background

During trial, the United States presented evidence that Cabrera flew to Lexington and received sums of cash from Nemetz on two occasions. DEA Task Force Officer Matthew Dawkins (TFO Dawkins) surveilled Cabrera when the defendant first visited the TownePlace Suites in Lexington on December 20, 2020. The government introduced video footage of Nemetz delivering a gift bag to Cabrera's hotel room around 6:26 p.m. on the night of his visit and leaving the hotel room about a minute later.[1]

The government presented similar evidence regarding Cabrera's second trip to Lexington on February 2, 2021. During this trip, Cabrera was accompanied by a coconspirator, Defendant Ruvi Pacheco.[2] Pacheco stated to a TownePlace Suites employee that she and Cabrera intended to visit family during the visit, but TFO Dawkins noted that the defendants only left the hotel on a single occasion to purchase food. Video footage shows Nemetz arriving at Cabrera's and Pacheco's hotel room around 7:48 p.m. that night, dropping off a Nike bag filled with cash, and leaving minutes later.

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[1] Law enforcement officers attempted to intercept Cabrera at the Lexington airport as he was leaving the following morning. However, their efforts to obtain the assistance from Homeland Security in checking Cabrera's luggage on that date were unsuccessful. A K-9 unit apparently was not available on that date.

[2] Defendant Pacheco also proceeded to trial with Cabrera and Tajwar and was convicted of the charges asserted against her. However, she has not filed a similar, post-trial motion for judgment of acquittal or for a new trial.

TFO Morris spoke with Cabrera and Pacheco at the Lexington airport before those defendants left Kentucky on the morning of February 3, 2021. Cabrera told law enforcement that he met Nemetz at a Subway restaurant, despite video footage showing that Nemetz visited Cabrera at the TownePlace Suites. Cabrera also consented to law enforcement searching his luggage after a drug dog alerted to the presence of the odor of narcotics. Photos of the search established that the defendant's luggage contained $196,870.00 stuffed inside pairs of size 42 and 46 jeans, despite the fact that, as TFO Hart noted, the defendants "mostly [wear] 30 and 32 size pants." [Record No. 242, p. 81]

The government also presented evidence of the defendants' flight records which indicated that "every single ticket [purchased by Cabrera] was a one-way ticket. And most of the tickets, the vast majority, were purchased the day before or the day of travel." [*Id.* at p. 70]

B. Discussion

The United States provided ample evidence to support Defendant Cabrera's conviction under Counts 4 and 8. A rational jury could easily conclude that Cabrera knowingly and voluntarily participated in the charged conspiracy based on his trips to Lexington lasting less than 24 hours, footage of Nemetz briefly visiting the defendant at his hotel on both occasions, and the fact that Cabrera and a co-defendant filled luggage with bundles of cash amounting to almost $200,000.00 during the second trip. Based on the evidence presented, a reasonable jury could conclude that the defendant knew that the purpose of the conspiracy was to engage in ongoing drug trafficking activities and that he voluntarily joined the conspiracy, helping advance or achieve its goals, when he received money from Nemetz for further transport. [Record No. 222, p. 20]

Additionally, the government presented sufficient evidence establishing that Cabrera was guilty of promotional money laundering. A rational jury could readily infer that Cabrera knew that the money he received "represented the proceeds of some form of unlawful activity" due to the circumstances surrounding his meetings with his coconspirator. He met with Nemetz for less than five minutes during both trips, and on his second trip he received nearly $200,000.00. Additionally, a reasonable and rational jury could determine based on the evidence that Cabrera acted with an intent to promote drug trafficking activity based on efforts to conceal the money in his suitcase.

II. New Trial

Both defendants also have moved for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. [Record Nos. 229, 232] Rule 33 states that, "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." "The decision whether to grant a new trial is left to the sound discretion of the district court." *United States v. Pierce*, 62 F.3d 818, 823 (6th Cir. 1995) (citation omitted). Moreover, "it is widely agreed that Rule 33's 'interest of justice' standard allows the grant of a new trial where substantial legal error has occurred." *United States v. Munoz*, 605 F.3d 359, 373 (6th Cir. 2010). A moving defendant bears the burden of demonstrating that a new trial is warranted. *United States v. Davis*, 15 F.3d 526, 531 (6th Cir. 1994).

1. Defendant Tajwar

Tajwar claims that he is entitled to a new trial because the United States failed to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). [Record No. 232] He asserts that the government violated *Brady* by introducing video evidence of TFO Morris' video-recorded interview with Tajwar without providing audio of the recording.

[Record No. 232-1, pp. 1-2] Tajwar contends that the failure to provide the audio, which contains both exculpatory and impeachment evidence, prejudiced him because the statements in the recording constituted material evidence establishing his innocence.

Brady requires the government to disclose any evidence which is "favorable to the accused, and . . . material to the issue of guilt or punishment." *United States v. Miller*, 161 F. 3d 977, 986 (6th Cir. 1998). "The *Brady* inquiry has three prongs: 'The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" *United States v. Paulus*, 952 F.3d 717, 724 (6th Cir. 2020) (citing *Strickler v. Greene*, 527 U.S. 263 (1999)).

Tajwar claims that the government's failure to provide audio of his recorded conversation with TFO Morris (the audio recording) violated *Brady* because the recording includes exculpatory and impeaching evidence. He asserts that the evidence is exculpatory because he stated in the recording that he did not know the source of the money he received from Ipock. [Record No. 232-1, p. 4] However, as the United States explains in its response, the jury already heard Tajwar's statements that he did not know where the money came from through Officer Gabriel's testimony. [Record No. 248, p. 8] Because the content of the audio recording merely reiterates evidence that was already presented, it was not *materially* exculpatory under *Brady*'s first prong. *See Moldowan v. City of Warren*, 578 F.3d 351, 387 (6th Cir. 2009) (noting that *Brady* imposes an "absolute duty" on the government to disclose "'material exculpatory evidence'" that directly affects the "'fundamental fairness' of a defendant's criminal trial") (citing *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)).

Tajwar also claims that the audio recording could have been used to impeach TFO Morris' testimony at trial. [Record No. 232-1, pp. 5-6] The defendant identifies three alleged inconsistencies between his statements in the recording and TFO Morris' written report of their conversation. [*Id.*, Record No. 238-1] Tajwar first asserts that TFO Morris misrepresented the defendant's statements when the officer wrote that Tajwar said that he "was going to buy electronics and send them over seas [sic]." He also alleges that TFO Morris' written report indicates that Tajwar identified Cristal Peng as his boss, while the recording does not contain any statement from the defendant to that effect. Finally, he contends that the officer's report states that Tajwar claimed to "pick[] up money where directed because it is payment for his business," although the defendant "never made this statement." [Record No. 232-1, pp. 5-6]

There is no distinction between the statement in TFO Morris' report that Tajwar claimed to sell phones overseas and the defendant's statements in the audio recording. [Record No. 238-1] Tajwar expressly states, "I told you, I sell overseas" during his recorded conversation with TFO Morris, which is wholly consistent with the officer's report. [Record No. 232-2, at 01:29-01:31] Regarding the second purported inconsistency, the United States explains that TFO Morris claimed that Tajwar identified Peng as his boss during an unrecorded portion of their conversation. [Record No. 248, p. 11] And although the defendant does not use the word "boss" in his recorded conversation with TFO Morris, he states that Peng belongs to "the company" that engages in his business of selling phones. [Record No. 232-2, at 02:45-03:00]

TFO Morris' third statement (i.e., that Tajwar picked up money as "payment for his business"), is also consistent with the statements in the recorded conversation. Tajwar shows TFO Morris records of his text messages during their conversation, including invoices and

pictures of used phones, and the defendant states that he messages Peng and others regarding money pickups because they "owe him." [Record No. 232-2, at 03:05-03:55] The defendant does not expressly tell TFO Morris that he received the money for his business, but his conduct during their conversation is consistent with that statement.

But even if the statements in the audio recording do not exactly reflect the statements contained in TFO Morris' report, Tajwar has not demonstrated that the alleged inconsistencies, if presented at trial, would have undermined TFO Morris' testimony to the extent that "the result of [the trial] would have been different." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). The audio recording was not materially impeaching or exculpatory and the failure to disclose it did not violate *Brady*.

Additionally, the United States did not suppress the audio recording, "either willfully or inadvertently," because it did not *possess* the evidence. *Paulus*, 952 F.3d at 724. "*Brady* is concerned only with cases in which the government possesses information which the defendant does not." *United States v. Mullins*, 22 F.3d 1365, 1371 (6th Cir. 1994); *see also Weatherford v. Bursey*, 429 U.S. 545, 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one."). The government states that it was not aware that the recording contained audio until TFO Morris testified to that effect at trial, but that it provided a copy of the evidence to defense counsel after learning that a version with audio was available. [Record No. 248, pp. 6-7] The defendant has not challenged the United States' account or otherwise alleged that the government withheld the evidence in bad faith. Because the government was not made aware of the audio recording before trial, its failure to provide it earlier in the proceeding did not amount to suppression under *Brady*'s second prong.

Finally, the defendant was not prejudiced by the failure to disclose the recording. First, as noted above, failure to disclose the recording did not affect the outcome of the defendant's trial because Tajwar's statements in the recording were substantively equivalent to his statements to Officer Gabriel. *See Bies v. Sheldon*, 775 F.3d 386, 399 (6th Cir. 2014) (the "proper focus of *Brady*'s materiality inquiry is on the cumulative effect of the suppressed evidence on the outcome of the trial.") (citing *Kyles v. Whitley*, 514 U.S. 419, 436-37 (1995)).

Failure to disclose the audio recording earlier in the proceeding also was not prejudicial because Tajwar was independently aware of the evidence. "[T]he prosecution is not obligated under *Brady* to disclose information to the defense that the defense already 'knew or should have known.'" *Id.* (citing *United States v. Castano*, 906 F.3d 458, 466 (6th Cir. 2018)); *see also Jones v. Bagley*, 696 F.3d 475, 487 (6th Cir. 2012) (finding no *Brady* violation when the defendant "knew or should have known the essential facts permitting him to take advantage of the information in question."). Tajwar participated in the interview with Morris and, therefore, was aware of the facts underlying their interaction, including any statements that the defendant made. Even if Tajwar did not know that an audio recording of their conversation existed, his attorney was nonetheless able to question TFO Morris regarding the substance of their discussion on cross-examination.

2. Defendant Cabrera

Adopting the position taken by Defendant Tajwar during trial, Cabrera now argues that he is entitled to a new trial because the Court erred by summarizing trial testimony in response to a question submitted by the jury. [Record No. 229, p. 3] His counsel explains that, after "more than three (3) hours of deliberations," the jury asked the Court the following question:

> Was there a drug dog / K9 unit utilized in the airport search of Cabrera & Pacheco's luggage? In relation to TFO Hart's testimony on Feb. 2, 2021.

[Record No. 218] Counsel for all parties opined that the Court should instruct the jury to rely on their collective memory of the testimony, although the United States noted that "there was testimony that Officer Giles' dog, Johan, alerted to the luggage." [Record No. 244, pp. 9-10] Counsel for Cabrera agreed that TFO Hart had testified "that a drug dog was present." [*Id.* at p. 10] The Court then provided the following response:

> Members of the jury,
>
> In response to your first question, let me respond as follows: testimony was presented by TFO Officer Hart that a drug dog/K-9 unit was used in the airport search of Defendants Cabrera's and Pacheco's luggage on February 2, 2021.
>
> Please keep in mind that you should consider the testimony on the issue you raised, together with all other testimony and evidence presented in the case. Do not consider it by itself, out of context. Consider all the evidence together as a whole.

[*Id.* at pp. 10, 12] According to Cabrera, the Court's jury instruction prejudiced his defense and led to his conviction.

Cabrera cites *United States v. Rodgers*, a case in which the Sixth Circuit held that a lower court did not err when it gave the jury the transcript of a witness's testimony. 109 F.3d 1138, 1141 (6th Cir. 1997). The court recognized the "two inherent dangers" resulting from permitting a jury to read trial transcripts: (1) that the jury "may accord 'undue emphasis' to the testimony," and (2) that the jury "may apprehend the testimony 'out of context.'" *Id.* at p. 1143. It remained unconcerned that either danger was present at Rodgers' trial because the jury received the entire transcript of the witness's testimony, there was no suggestion that the jury was unable to reach a verdict prior to asking for the transcript, and no circumstances indicated that the jury intended to emphasize specific testimony over other evidence. *Id.* at

1143-44. And it established the prophylactic rule that courts providing transcripts of trial testimony must include an instruction "cautioning the jury on the proper use of that testimony," although it noted that the court's failure to do so in that case did not amount to plain error. *Id.* at 1145.

Similarly, the Sixth Circuit in *United States v. Harvey* upheld a lower court's decision to read portions of a witness's testimony in response to the jury's discrete factual questions. 653 F.3d 388, 397 (6th Cir. 2011). In *Harvey*, the jury asked for testimony regarding "the dates that guns were confiscated," whether officers took notes during their interview with the defendant, and when the defendant said that he had exchanged money for a gun. *Id.* The court held that reading back portions of testimony to answer the jury's questions is generally not an abuse of discretion where "the jury's factual questions are very specific and definitive answers can be easily located in the record, such as questions about specific dates and times where such facts are not disputed." *Id.* at 398. It further noted that providing testimony on specific issues in that case did not risk unduly emphasizing the testimony any more "than the jury [had] already done in framing the question." *Id.* Finally, the court noted that any danger resulting from reading from the transcripts was sufficiently cured by the court's cautionary instruction. *Id.*

Here, the answer to the jury's question regarding use of a drug dog on Cabrera's luggage was proper because there was minimal risk that the jury would unduly emphasize the testimony contained in the Court's answer. Like in *Harvey*, the jury asked a specific, factual question and the response to which was undisputedly correct. Although the attorneys did not agree with the Court's decision to respond to the jury's question, counsel for the parties expressly stated that they agreed with the substance of the answer provided. Additionally, the

Court limited the scope of its answer by stating that TFO Hart testified that a drug dog "was used" during the search of Cabrera's luggage, without indicating whether the drug dog alerted to the presence of narcotics.

The defendant suggests that, because the jury deliberated for over three hours before asking its question, the answer provided was likely key to its decision to find Cabrera guilty. However, after the Court responded to its question, the jury continued to deliberate for an additional hour and later asked a second question on an unrelated issue. [*See* Record Nos. 244, p. 11, 245, p. 14.] By the defendant's logic, the record of the jury's subsequent deliberations demonstrates that the answer to its first question was not key to its ultimate determination, minimizing the risk that it "place[d] inordinate emphasis on [the] testimony [in the Court's answer]." *Rodgers*, 109 F.3d at 1144 (citing *United States v. Padlin*, 787 F.2d 1071, 1076-77 (6th Cir. 1986)). Finally, like in *Harvey*, the Court lessened any risk that the jury would take the evidence provided out of context by including cautionary instructions "urg[ing] the jury to rely primarily on its collective memory." 653 F.3d at 398.

III. Conclusion

Defendants Tajwar and Cabrera are not entitled to acquittal of their convictions. The United States presented substantial evidence from which a reasonable jury could readily, easily, and rationally conclude that each conspired to launder drug proceeds and engaged in promotional money laundering. Next, the government was not required to provide an audio recording of TFO Morris' interview with Tajwar earlier in the proceeding under *Brady*. Finally, the Court's response to the jury's factual question does not justify granting Cabrera's motion for a new trial. Accordingly, it is hereby

ORDERED that Defendants Tawsif Tajwar and Claudio Cabrera's motions for a judgment of acquittal or, in the alternative, for a new trial [Record Nos. 229, 230, 232] are **DENIED**.

Dated: May 17, 2023.

Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 23-5711

UNITES STATES OF AMERICA,
Plaintiff-Appellee

v.

TAWSIF TAJWAR,
Defendant

Filed: March 28, 2025

No. 23-5711

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TAWSIF TAJWAR,

Defendant-Appellant,

v.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

ORDER

BEFORE: MURPHY, DAVIS, and BLOOMEKATZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk