

No. _____

In The
Supreme Court of the United States

JIYAO JIANG

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

On Petition for a Writ of Certiorari to the United States Court of
Appeals for the Second Circuit

APPENDIX

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APPENDIX

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17-1070-cr

United States v. Jiang

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of March, two thousand eighteen.

PRESENT: JOSÉ A. CABRANES,
SUSAN L. CARNEY,
Circuit Judges,
LAWRENCE J. VILARDO,
*District Judge.*¹

UNITED STATES OF AMERICA,

Appellee,

v.

17-1070-cr

JIYAO JIANG, A/K/A YI QIANG,

*Defendant-Appellant.*²

¹ Judge Lawrence J. Vilaro, of the United States District Court for the Western District of New York, sitting by designation.

² The Clerk of Court is respectfully directed to amend the official caption to conform with the above.

FOR GOVERNMENT-APPELLEE:

NADIA E. MOORE (Susan Corkery, *on the brief*),
for Richard P. Donoghue, United States
Attorney for the Eastern District of New
York, Brooklyn, NY.

FOR DEFENDANT-APPELLANT:

RICHARD LEVITT, Levitt & Kaiser, New York,
NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Carol B. Amon, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the April 11, 2017 judgment of the District Court is **AFFIRMED**.

Defendant-appellant Jiyao Jiang (“Jiang”) appeals from an April 11, 2017 judgment of conviction following a jury trial. Jiang was convicted of participation in an extortionate collection of credit conspiracy, in violation of 18 U.S.C. § 894. He was sentenced to 28 months’ imprisonment and two years’ supervised release, and was ordered to pay \$2,000 in restitution. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

The government’s indictment charged a single conspiracy that involved multiple individuals, including Jiang, who attempted to extort money from Tian Long Guo, the alleged debtor, on two different occasions: one in October 2013 and a second in December 2013. Guo had allegedly failed to repay loans in an amount over \$100,000.

While Jiang was physically present for the October 2013 encounter, he was not present when his associates attempted to collect the debt again in December 2013. On appeal, Jiang claims that the extortionate actions taken in December 2013 by different associates of the leader of the conspiracy were part of a separate conspiracy, such that he is not liable for the illegal conduct committed by others on that date. He therefore argues that the District Court should have excluded any evidence related to the December 2013 effort to collect the debt from Guo, and that he should be afforded a new trial in light of this allegedly prejudicial error. We find Jiang’s claim to be without merit.

“Whether the government has proven the existence of the conspiracy charged in the indictment and each defendant’s membership in it, or, instead, has proven several independent conspiracies is a question of fact for a properly instructed jury.” *United States v. Johansen*, 56 F.3d 347, 350 (2d Cir. 1995). Where a defendant contends that multiple conspiracies were proven at trial, rather than the single conspiracy charged in the indictment, the defendant bears the burden of showing that “no rational trier of fact could have concluded that a single conspiracy existed based on the evidence presented.” *United States v. Sureff*, 15 F.3d 225, 230 (2d Cir. 1994) (citations omitted).

On appeal from a judgment of conviction following a jury verdict, we review the evidence in the light most favorable to the government, drawing all inferences in its favor. *United States v. Millar*, 79 F.3d 388, 344 (2d Cir. 1996). Even if we find that the government charged one conspiracy but presented proof of multiple conspiracies at trial, a conviction may be reversed on this basis “only upon a showing of substantial prejudice.” *Johansen*, 56 F.3d at 351. A defendant thus must show that the jury convicted him “on evidence unrelated to his own alleged activity.” *United States v. Washington*, 48 F.3d 73, 80 (2d Cir. 1995).

The evidence presented at trial established the existence of a single conspiracy, of which Jiang was a part, to collect an alleged debt from Guo by the unlawful use of violence and/or the threat of violence. At no point did that common purpose change, even if different actors were involved in accomplishing this goal at different times. Nonetheless, Jiang’s principal argument on appeal is that he had no interaction with some of the other members of the single charged conspiracy. This argument is without merit.

There is no requirement in conspiracy law that the same individuals be involved throughout the duration of the conspiracy. *United States v. Nersesian*, 824 F.2d 1294, 1303 (2d Cir. 1987) (“The jury need not have concluded that the same people were involved throughout the entire period of the conspiracy in order to find one conspiracy. The jury could have reasonably concluded that some members of the conspiracy charged participated throughout the entire period of the conspiracy, while others were involved in its early stages, and still others became involved in its late stages.”).

CONCLUSION

We have considered Jiang’s remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the District Court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

The block contains a handwritten signature in cursive script that reads "Catherine O'Hagan Wolfe". Overlaid on the signature is the official seal of the United States Second Circuit Court of Appeals. The seal is circular with a blue outer ring containing the text "UNITED STATES" at the top and "SECOND CIRCUIT" at the bottom, separated by two stars. The center of the seal is white with a blue star.

PACER fee: Exempt

**General Docket
Court of Appeals, 2nd Circuit**

Court of Appeals Docket #: 17-1070 United States of America v. Zheng (Jiang) Appeal From: EDNY (BROOKLYN) Fee Status: IFP Granted		Docketed: 04/14/2017 Termed: 03/20/2018										
Case Type Information: 1) Criminal 2) Direct Criminal 3) none												
Originating Court Information: District: 0207-1 : 1:15-cr-628-7 Trial Judge: Carol Amon, U.S. District Judge Date Filed: 12/09/2015 <table style="width:100%;"> <tr> <td>Date Order/Judgment: 04/11/2017</td> <td>Date Order/Judgment EOD: 04/11/2017</td> <td>Date NOA Filed: 04/14/2017</td> <td>Date Rec'd COA: 04/14/2017</td> </tr> </table>			Date Order/Judgment: 04/11/2017	Date Order/Judgment EOD: 04/11/2017	Date NOA Filed: 04/14/2017	Date Rec'd COA: 04/14/2017						
Date Order/Judgment: 04/11/2017	Date Order/Judgment EOD: 04/11/2017	Date NOA Filed: 04/14/2017	Date Rec'd COA: 04/14/2017									
Prior Cases: None												
Current Cases: <table style="width:100%; border-top: 1px solid black; border-bottom: 1px solid black;"> <thead> <tr> <th></th> <th align="center">Lead</th> <th align="center">Member</th> <th align="center">Start</th> <th align="center">End</th> </tr> </thead> <tbody> <tr> <td>Consolidated</td> <td align="center">17-1070</td> <td align="center">17-1130</td> <td align="center">04/18/2017</td> <td></td> </tr> </tbody> </table>				Lead	Member	Start	End	Consolidated	17-1070	17-1130	04/18/2017	
	Lead	Member	Start	End								
Consolidated	17-1070	17-1130	04/18/2017									
Panel Assignment: Not available												

United States of America
Appellee USA

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Guifu Gao, AKA Chicken Feather
 Defendant

Xin Lin, AKA Blackie
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Allen Hui Chen, AKA Yi Hui
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Billy Chen, AKA Lo Di
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Xue Jiang Gao, AKA Xue Zhang
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6/12/2018

17-1070 Docket

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United States of America,

Appellee,

v.

Jiyao Jiang, AKA Yi Qiang,

Defendants - Appellants.

04/14/2017  [1](#) NOTICE OF CRIMINAL APPEAL, with district court docket, on behalf of Appellant Jiyao Jiang, FILED. [2012268] [17-1070] [Entered: 04/17/2017 09:56 AM]
38 pg, 171.65 KB

04/14/2017  [2](#) DISTRICT COURT JUDGMENT, dated 04/11/2017, RECEIVED.[2012273] [17-1070] [Entered: 04/17/2017 10:02 AM]
7 pg, 282.62 KB

04/14/2017  [3](#) ELECTRONIC INDEX, in lieu of record, FILED.[2012276] [17-1070] [Entered: 04/17/2017 10:03 AM]
37 pg, 172.63 KB

04/17/2017  [4](#) NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee USA United States of America, FILED. Service date 04/17/2017 by CM/ECF. [2012651] [17-1070] [Entered: 04/17/2017 01:52 PM]
1 pg, 65 KB

04/17/2017  5 ATTORNEY, Nadia Moore, [\[4\]](#), in place of attorney Peter A. Norling, SUBSTITUTED.[2012660] [17-1070] [Entered: 04/17/2017 01:59 PM]

04/17/2017  [6](#) ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee USA United States of America, FILED. Service date 04/17/2017 by CM/ECF.[2012754] [17-1070] [Entered: 04/17/2017 02:48 PM]
1 pg, 65.19 KB

04/18/2017  [7](#) ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellant Jiyao Jiang, FILED. Service date 04/18/2017 by CM/ECF.[2014056] [17-1070] [Entered: 04/18/2017 06:45 PM]
1 pg, 44.7 KB

04/18/2017  [8](#) FORM B, on behalf of Appellant Jiyao Jiang , FILED. Service date 04/18/2017 by CM/ECF.[2014057] [17-1070] [Entered: 04/18/2017 06:46 PM]
1 pg, 30.81 KB

04/18/2017  [10](#) NOTICE OF CRIMINAL APPEAL, with district court docket, on behalf of Appellant Kai Huan Huang in 17-1070, FILED. [2015368] [17-1130, 17-1070] [Entered: 04/20/2017 10:11 AM]
38 pg, 189.43 KB

04/18/2017  [11](#) DISTRICT COURT JUDGMENT, dated 04/11/2017, RECEIVED.[2015389] [17-1130, 17-1070] [Entered: 04/20/2017 10:22 AM]
7 pg, 293.65 KB

04/18/2017  [12](#) ELECTRONIC INDEX, in lieu of record, FILED.[2015392] [17-1130, 17-1070] [Entered: 04/20/2017 10:24 AM]
37 pg, 173.63 KB

04/20/2017  [9](#) CAPTION, KAI HUAN HUANG ADDED AS "APPELLANT-DEFENDANT," AMENDED.[2015348] [17-1070] [Entered: 04/20/2017 09:59 AM]
1 pg, 9.34 KB

04/20/2017  13 NEW CASE 17-1130, on behalf of Kai Huan Huang, FILED.[2015422] [17-1070] [Entered: 04/20/2017 10:42 AM]

04/20/2017  14 NOTE: See lead case, 17-1070, containing complete set of docket entries.[2015426] [17-1130, 17-1070] [Entered: 04/20/2017 10:44 AM]

04/20/2017  [15](#) NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee USA United States of America in 17-1130, 17-1070, FILED. Service date 04/20/2017 by CM/ECF. [2015436] [17-1130, 17-1070] [Entered: 04/20/2017 10:48 AM]
1 pg, 64.87 KB

04/20/2017  16 ATTORNEY, Nadia Moore, [\[15\]](#), in place of attorney Peter A. Norling, SUBSTITUTED.[2015561] [17-1130, 17-1070] [Entered: 04/20/2017 11:49 AM]

04/20/2017  [17](#) ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee USA United States of America in 17-1130, 17-1070, FILED. Service date 04/20/2017 by CM/ECF.[2015580] [17-1130, 17-1070] [Entered: 04/20/2017 11:55 AM]
1 pg, 65.09 KB

04/20/2017  [18](#) CAPTION, Position of "Defendants-Appellants" placed below "Defendants," AMENDED.[2015634] [17-1070] [Entered: 04/20/2017 12:29 PM]
1 pg, 9.35 KB

04/20/2017  [21](#) NEW CASE MANAGER, Gerard Whidbee, ASSIGNED.[2015869] [17-1070] [Entered: 04/20/2017 03:08 PM]
1 pg, 9.14 KB

04/25/2017  [22](#) MOTION, to be relieved as attorney, on behalf of Appellant Kai Huan Huang in 17-1130, FILED. Service date 04/25/2017 by CM/ECF. [2018994] [17-1130, 17-1070] [Entered: 04/25/2017 01:51 PM]
4 pg, 140.11 KB

04/25/2017  25 CERTIFICATE OF SERVICE, for Motion Information Statement and Affidavit in Support of Motion, on behalf of Appellant Kai Huan Huang in 17-1130, FILED. Service date 04/25/2017 by US mail.[2019218] [17-1130, 17-1070] [Entered: 04/25/2017 03:25 PM]

04/25/2017  [26](#) DEFECTIVE DOCUMENT, CERTIFICATE OF SERVICE, [25], on behalf of Appellant Kai Huan Huang in 17-1130, FILED.[2019260] [17-1130, 17-1070] [Entered: 04/25/2017 03:38 PM]
2 pg, 17.32 KB

04/25/2017  [27](#) CERTIFICATE OF SERVICE, for Motion Information Statement and supporting Affidavit, on behalf of Appellant Kai Huan Huang in 17-1130, FILED. Service date 04/25/2017 by US mail.[2019281] [17-1130, 17-1070] [Entered: 04/25/2017 03:44 PM]
1 pg, 23.95 KB

04/25/2017  28 CURED DEFECTIVE CERTIFICATE OF SERVICE [\[27\]](#), [\[26\]](#), on behalf of Appellant Kai Huan Huang in 17-1130, FILED.[2019311] [17-1130, 17-1070] [Entered: 04/25/2017 03:56 PM]

04/26/2017	☐ 31 1 pg, 60.7 KB	MOTION ORDER, granting motion to be relieved as attorney [22] filed by Appellant Kai Huan Huang, FILED. [2019588][31] [17-1070, 17-1130] [Entered: 04/26/2017 08:44 AM]
04/26/2017	☐ 32 1 pg, 60.7 KB	CJA COUNSEL, Malvina Nathanson, for Kai Huan Huang, ASSIGNED.[2019597] [17-1070, 17-1130] [Entered: 04/26/2017 08:48 AM]
05/01/2017	☐ 33 1 pg, 40.67 KB	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellant Kai Huan Huang in 17-1070, 17-1130, FILED. Service date 05/01/2017 by CM/ECF.[2022884] [17-1070, 17-1130] [Entered: 05/01/2017 09:32 AM]
05/01/2017	☐ 34 1 pg, 134.81 KB	FORM B, on behalf of Appellant Kai Huan Huang in 17-1070, 17-1130 , FILED. Service date 05/01/2017 by CM/ECF, US mail.[2023717] [17-1070, 17-1130] [Entered: 05/01/2017 04:08 PM]
05/04/2017	☐ 37 1 pg, 9.11 KB	NEW CASE MANAGER, Gerard Whidbee, ASSIGNED.[2026515] [17-1130] [Entered: 05/04/2017 09:24 AM]
06/15/2017	☐ 40 1 pg, 17.25 KB	TRANSCRIPT STATUS UPDATE LETTER, dated 06/15/2017, on behalf of Appellant Kai Huan Huang in 17-1070, 17-1130 , informing court of transcript delays, RECEIVED. Service date 06/15/2017 by CM/ECF. [2058894] [17-1070, 17-1130] [Entered: 06/15/2017 10:35 AM]
06/16/2017	☐ 41 1 pg, 297.23 KB	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Jiyao Jiang in 17-1070, informing Court of proposed due date 09/13/2017, RECEIVED. Service date 06/16/2017 by CM/ECF.[2060123] [17-1070, 17-1130] [Entered: 06/16/2017 02:48 PM]
06/19/2017	☐ 44 1 pg, 36.89 KB	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellant Jiyao Jiang in 17-1070 Brief due date as 09/13/2017. Joint Appendix due date as 09/13/2017, FILED.[2060628] [17-1070, 17-1130] [Entered: 06/19/2017 09:45 AM]
06/29/2017	☐ 45 1 pg, 20.33 KB	TRANSCRIPT STATUS UPDATE LETTER, dated 06/29/2017, on behalf of Appellant Kai Huan Huang in 17-1070, 17-1130 , informing court of transcript delays, RECEIVED. Service date 06/29/2017 by CM/ECF. [2068972] [17-1070, 17-1130] [Entered: 06/29/2017 11:28 AM]
07/14/2017	☐ 50 35 pg, 372.21 KB	BRIEF, on behalf of Appellant Jiyao Jiang in 17-1070, FILED. Service date 07/14/2017 by CM/ECF. [2079201] [17-1070, 17-1130] [Entered: 07/14/2017 01:49 PM]
07/14/2017	☐ 51 58 pg, 1.42 MB	JOINT APPENDIX, volume 1 of 1, (pp. 1-56), on behalf of Appellant Jiyao Jiang in 17-1070, FILED. Service date 07/14/2017 by CM/ECF.[2079212] [17-1070, 17-1130] [Entered: 07/14/2017 01:52 PM]
08/15/2017	☐ 66 1 pg, 17.26 KB	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellant Kai Huan Huang in 17-1070, 17-1130, informing Court of proposed due date 10/11/2017, RECEIVED. Service date 08/15/2017 by CM/ECF. [2100988] [17-1070, 17-1130] [Entered: 08/15/2017 11:51 AM]
08/15/2017	☐ 69 1 pg, 36.88 KB	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellant Kai Huan Huang in 17-1070, 17-1130 Brief due date as 10/11/2017. Joint Appendix due date as 10/11/2017, FILED.[2101266] [17-1070, 17-1130] [Entered: 08/15/2017 03:06 PM]
08/31/2017	☐ 70 122 pg, 4.45 MB	APPENDIX, volume 1 of 1, (pp. 1-119), on behalf of Appellant Kai Huan Huang in 17-1130, 17-1070, FILED. Service date 08/31/2017 by CM/ECF.[2114754] [17-1130, 17-1070] [Entered: 08/31/2017 12:20 PM]
08/31/2017	☐ 71 19 pg, 128.07 KB	BRIEF, on behalf of Appellant Kai Huan Huang in 17-1130, 17-1070, FILED. Service date 08/31/2017 by CM/ECF.[2114758] [17-1130, 17-1070] [Entered: 08/31/2017 12:21 PM]
08/31/2017	☐ 72 1 pg, 272.63 KB	LR 31.2 SCHEDULING NOTIFICATION, on behalf of Appellee USA United States of America in 17-1070, 17-1130, informing Court of proposed due date 11/30/2017, RECEIVED. Service date 08/31/2017 by CM/ECF.[2115010] [17-1070, 17-1130] [Entered: 08/31/2017 03:21 PM]
08/31/2017	☐ 80	SEALED PRE-SENTENCE REPORT, on behalf of Appellant Kai Huan Huang, RECEIVED.[2119363] [17-1130] [Entered: 09/07/2017 03:48 PM]
09/01/2017	☐ 75 1 pg, 36.74 KB	SO-ORDERED SCHEDULING NOTIFICATION, setting Appellee United States of America in 17-1070, 17-1130 Brief due date as 11/30/2017, FILED.[2115439] [17-1070, 17-1130] [Entered: 09/01/2017 09:35 AM]
11/20/2017	☐ 83 38 pg, 221.4 KB	BRIEF, on behalf of Appellee USA United States of America in 17-1070, 17-1130, FILED. Service date 11/20/2017 by CM/ECF. [2176211] [17-1070, 17-1130] [Entered: 11/20/2017 03:28 PM]
11/20/2017	☐ 84 1 pg, 79.4 KB	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Nadia Elizabeth Moore for Appellee USA United States of America in 17-1070, 17-1130, FILED. Service date 11/20/2017 by CM/ECF. [2176221] [17-1070, 17-1130] [Entered: 11/20/2017 03:31 PM]
11/21/2017	☐ 86 1 pg, 41.43 KB	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer Attorney Ms. Malvina Nathanson, Esq. for Appellant Kai Huan Huang in 17-1130, FILED. Service date 11/21/2017 by CM/ECF. [2176894] [17-1130, 17-1070] [Entered: 11/21/2017 10:09 AM]
11/22/2017	☐ 90	SEALED PRE-SENTENCE REPORT & ADDENDUM TO PRE-SENTENCE REPORT, on behalf of Appellant Kai Huan Huang, RECEIVED.[2178532] [17-1130] [Entered: 11/22/2017 11:46 AM]
11/28/2017	☐ 91	REPLY BRIEF, on behalf of Appellant Jiyao Jiang in 17-1070, FILED. Service date 11/28/2017 by CM/ECF.

	10 pg, 435.74 KB	[2180782] [17-1070, 17-1130] [Entered: 11/28/2017 11:34 AM]
12/11/2017	☐ 93	CASE CALENDARING, for the week of 03/05/2018, PANEL A, PROPOSED.[2191400] [17-1070, 17-1130] [Entered: 12/11/2017 01:50 PM]
01/08/2018	☐ 94	CASE CALENDARING, on submission for 03/07/2018, A Panel, SET.[2208126] [17-1070, 17-1130] [Entered: 01/08/2018 01:30 PM]
01/11/2018	☐ 95 2 pg, 420.53 KB	LETTER, on behalf of Appellant Jiyao Jiang, alerting court that oral argument is requested by counsel for appellant, RECEIVED. Service date 01/11/2018 by CM/ECF.[2211272] [17-1070] [Entered: 01/11/2018 09:33 AM]
01/16/2018	☐ 100 1 pg, 9.8 KB	SUBMITTED NOTICE, to attorneys/parties, TRANSMITTED.[2214318] [17-1070, 17-1130] [Entered: 01/16/2018 03:43 PM]
01/16/2018	☐ 101 2 pg, 17.32 KB	*REVISED ARGUMENT NOTICE, to attorneys/parties, TRANSMITTED.[2214367] [17-1070, 17-1130] [Entered: 01/16/2018 04:00 PM]
01/16/2018	☐ 102 1 pg, 21 KB	LETTER, on behalf of Appellant Kai Huan Huang, alerting court that counsel did not want oral argument, RECEIVED. Service date 01/16/2018 by CM/ECF.[2214446] [17-1070] [Entered: 01/16/2018 04:32 PM]
01/17/2018	☐ 104 1 pg, 37.67 KB	NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellant Jiyao Jiang, FILED. Service date 01/17/2018 by CM/ECF. [2214822] [17-1070] [Entered: 01/17/2018 10:49 AM]
01/17/2018	☐ 105 1 pg, 117.1 KB	NOTICE OF HEARING DATE ACKNOWLEDGMENT, on behalf of Appellee USA United States of America, FILED. Service date 01/17/2018 by CM/ECF. [2215375] [17-1070] [Entered: 01/17/2018 03:25 PM]
03/07/2018	☐ 108	CASE, before JAC, SLC, C.JJ., VILARDO, C.J., HEARD.[2251119] [17-1070, 17-1130] [Entered: 03/07/2018 10:29 AM]
03/20/2018	☐ 112 1 pg, 9.38 KB	NEW CASE MANAGER, Yana Segal, ASSIGNED.[2260385] [17-1130, 17-1070] [Entered: 03/20/2018 08:58 AM]
03/20/2018	☐ 113 5 pg, 178.95 KB	SUMMARY ORDER AND JUDGMENT, affirming judgment of the district court, by JAC, SLC, L.J. VILARDO, FILED.[2260398] [17-1130] [Entered: 03/20/2018 09:02 AM]
03/20/2018	☐ 114 5 pg, 167.13 KB	SUMMARY ORDER AND JUDGMENT, affirming judgment of the district court, by JAC, SLC, L.J. VILARDO, FILED.[2260426] [17-1070] [Entered: 03/20/2018 09:12 AM]
03/20/2018	☐ 116	CAPTION, in light of Summary Order filed, AMENDED.[2260444] [17-1070] [Entered: 03/20/2018 09:19 AM]
03/20/2018	☐ 117	CAPTION, in light of Summary Order filed, AMENDED.[2260449] [17-1130] [Entered: 03/20/2018 09:23 AM]
04/10/2018	☐ 120 3 pg, 607.2 KB	JUDGMENT MANDATE, ISSUED.[2275424] [17-1070] [Entered: 04/10/2018 10:08 AM]
06/06/2018	☐ 121 3 pg, 606.9 KB	JUDGMENT MANDATE, ISSUED.[2319461] [17-1130] [Entered: 06/06/2018 03:31 PM]
06/12/2018	☐ 122 2 pg, 37.16 KB	CERTIFIED mandate receipt, RETURNED.[2322657] [17-1130, 17-1070] [Entered: 06/12/2018 09:11 AM]

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MANDATE

17-1070-cr

United States v. Jiang

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 20th day of March, two thousand eighteen.

PRESENT: JOSÉ A. CABRANES,
SUSAN L. CARNEY,
Circuit Judges,
LAWRENCE J. VILARDO,
*District Judge.*¹

UNITED STATES OF AMERICA,

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v.

17-1070-cr

JIYAO JIANG, A/K/A YI QIANG,

*Defendant-Appellant.*²

¹ Judge Lawrence J. Vilaro, of the United States District Court for the Western District of New York, sitting by designation.

² The Clerk of Court is respectfully directed to amend the official caption to conform with the above.

FOR GOVERNMENT-APPELLEE:

NADIA E. MOORE (Susan Corkery, *on the brief*),
for Richard P. Donoghue, United States
Attorney for the Eastern District of New
York, Brooklyn, NY.

FOR DEFENDANT-APPELLANT:

RICHARD LEVITT, Levitt & Kaiser, New York,
NY.

Appeal from a judgment of the United States District Court for the Eastern District of New York (Carol B. Amon, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the April 11, 2017 judgment of the District Court is **AFFIRMED**.

Defendant-appellant Jiyao Jiang (“Jiang”) appeals from an April 11, 2017 judgment of conviction following a jury trial. Jiang was convicted of participation in an extortionate collection of credit conspiracy, in violation of 18 U.S.C. § 894. He was sentenced to 28 months’ imprisonment and two years’ supervised release, and was ordered to pay \$2,000 in restitution. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

The government’s indictment charged a single conspiracy that involved multiple individuals, including Jiang, who attempted to extort money from Tian Long Guo, the alleged debtor, on two different occasions: one in October 2013 and a second in December 2013. Guo had allegedly failed to repay loans in an amount over \$100,000.

While Jiang was physically present for the October 2013 encounter, he was not present when his associates attempted to collect the debt again in December 2013. On appeal, Jiang claims that the extortionate actions taken in December 2013 by different associates of the leader of the conspiracy were part of a separate conspiracy, such that he is not liable for the illegal conduct committed by others on that date. He therefore argues that the District Court should have excluded any evidence related to the December 2013 effort to collect the debt from Guo, and that he should be afforded a new trial in light of this allegedly prejudicial error. We find Jiang’s claim to be without merit.

“Whether the government has proven the existence of the conspiracy charged in the indictment and each defendant’s membership in it, or, instead, has proven several independent conspiracies is a question of fact for a properly instructed jury.” *United States v. Johansen*, 56 F.3d 347, 350 (2d Cir. 1995). Where a defendant contends that multiple conspiracies were proven at trial, rather than the single conspiracy charged in the indictment, the defendant bears the burden of showing that “no rational trier of fact could have concluded that a single conspiracy existed based on the evidence presented.” *United States v. Sureff*, 15 F.3d 225, 230 (2d Cir. 1994) (citations omitted).

On appeal from a judgment of conviction following a jury verdict, we review the evidence in the light most favorable to the government, drawing all inferences in its favor. *United States v. Millar*, 79 F.3d 388, 344 (2d Cir. 1996). Even if we find that the government charged one conspiracy but presented proof of multiple conspiracies at trial, a conviction may be reversed on this basis “only upon a showing of substantial prejudice.” *Johansen*, 56 F.3d at 351. A defendant thus must show that the jury convicted him “on evidence unrelated to his own alleged activity.” *United States v. Washington*, 48 F.3d 73, 80 (2d Cir. 1995).

The evidence presented at trial established the existence of a single conspiracy, of which Jiang was a part, to collect an alleged debt from Guo by the unlawful use of violence and/or the threat of violence. At no point did that common purpose change, even if different actors were involved in accomplishing this goal at different times. Nonetheless, Jiang’s principal argument on appeal is that he had no interaction with some of the other members of the single charged conspiracy. This argument is without merit.

There is no requirement in conspiracy law that the same individuals be involved throughout the duration of the conspiracy. *United States v. Nersesian*, 824 F.2d 1294, 1303 (2d Cir. 1987) (“The jury need not have concluded that the same people were involved throughout the entire period of the conspiracy in order to find one conspiracy. The jury could have reasonably concluded that some members of the conspiracy charged participated throughout the entire period of the conspiracy, while others were involved in its early stages, and still others became involved in its late stages.”).

CONCLUSION

We have considered Jiang’s remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the District Court.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

 

 