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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4149

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy,

Defendant – Appellant.

No. 20-4184

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy,

Defendant – Appellant.

Appeals from the United States District Court for the
District of Maryland, at Baltimore. Ellen L. Hollander,
Senior District Judge. (1:19-cr-00160-ELH-1)

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Submitted: December 10, 2021 Decided: February 24, 2022

Before WILKINSON, MOTZ, and HARRIS, Circuit Judges.

Affirmed by unpublished opinion. Judge Harris wrote the opinion, in which Judge Wilkinson and Judge Motz joined.

ON BRIEF: Howard M. Srebnick, Benjamin Samuel Waxman, BLACK SREBNICK KORNSPAN & STUMPF, PA, Miami, Florida, for Appellant. Robert K. Hur, United States Attorney, Paul E. Budlow, Jefferson McClure Gray, Judson T. Mihok, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PAMELA HARRIS, Circuit Judge:

This criminal case stems from a 2015 fire at Adcor Industries for which the owner, Demetrios Stavrakis, collected a \$15 million insurance payout. Suspicions arose when surveillance video showed Stavrakis tampering with the security system at the front entrance of the building on the evening of the fire. After an

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investigation, Stavrakis was charged with four federal offenses relating to arson and wire fraud.

A seven-week jury trial ended in convictions on all counts. Stavrakis moved for judgment of acquittal and a new trial, and the district court denied both. In a thorough and carefully reasoned opinion, the district court found that the circumstantial evidence against Stavrakis was sufficient to support his convictions, and rejected a claim that the jury had been improperly instructed on willful blindness. For the reasons given by the district court, we affirm Stavrakis's convictions and the judgment of the district court.

I.

A.

1.

This case began with a fire in the early morning hours of July 29, 2015, at a building in Baltimore, Maryland. The building housed Adcor Industries, owned by defendant Stavrakis, a precision parts business serving the beverage, aerospace, firearms, and defense industries. Investigators soon established that the fire was set intentionally, with the ignition of a drum of methanol in an interior office. The fire also appeared to be an inside job: There was no sign of forced entry, nothing was stolen, and the arsonist disarmed the alarm with the four-digit alarm code.

Stavrakis was interviewed at the scene and professed no knowledge of the fire's origins. Nor, he

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claimed, did he know how someone might have entered the building: He was not normally responsible for locking up and setting the alarm and had not done so on the night in question. Surveillance video later showed, however, that Stavrakis in fact did lock up and set the alarm on the evening of the fire, and that he had used the opportunity to tamper with an ID-card reader at the front door.

Nobody was injured in the fire. But the building was damaged and Adcor's insurer, Travelers Indemnity Company of America, paid an approximately \$15 million claim. Some of that money was used to repair the premises and to buy upgraded equipment and machinery. One repair claim, in particular, would become the subject of a separate fraud charge against Stavrakis: a \$30,000 claim for a modern security system to replace Adcor's previous and outdated system, which had sustained only modest damage in the clean-up after the fire. Stavrakis also used insurance proceeds to pay off private loans and, as the evidence later would reveal, to purchase luxury items including cars, a motorcycle, watches, and jewelry.

2.

After an eight-month investigation, Stavrakis was charged by indictment with four federal offenses. Count One charged Stavrakis with violating 18 U.S.C. § 844(h)(1) by using fire to commit a federal felony – specifically, wire fraud, as charged in Counts Two and Three. Correspondingly, Counts Two and Three

charged Stavrakis with wire fraud under 18 U.S.C. § 1343, with Count Two alleging fraud in connection with the \$15 million insurance payout and Count Three focusing on the \$30,000 repair claim for a new security system. And in Count Four, Stavrakis was charged with malicious destruction of property by fire – colloquially, arson – in violation of 18 U.S.C. § 844(i).

A lengthy and complex jury trial commenced on September 9, 2019. Consuming close to seven weeks, the trial featured the testimony of approximately 60 witnesses and the introduction of roughly 700 exhibits. The district court’s opinion sets out in detail the extensive evidence at trial, *see United States v. Stavrakis*, No. 1:19-cr-00160-ELH-1, 2020 WL 607036, at *3–*9 (D. Md. Feb. 7, 2020), and we recount it only briefly here.

It was undisputed that the Adcor fire was the product of arson. The government’s theory of the case was not that Stavrakis himself had set the fire – Stavrakis was at home when the fire was reported at approximately 1:30 a.m. on July 29, 2015 – but that he had worked with an accomplice, aiding and abetting the arson in order to collect insurance proceeds. *Id.* at *1. To establish motive, the government introduced “voluminous evidence” that Adcor had been in dire financial straits since 2010, when it lost a lucrative contract with a major customer. *Id.* at *8. In the years between 2010 and the 2015 fire, Adcor had been forced to default on multiple loans, and entered into various forbearance agreements with its lenders. The \$15 million recovered on the Travelers insurance policy, the

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government sought to prove, gave Stavrakis a much-needed cash infusion for his struggling business.

Central to the government's case against Stavrakis was the surveillance video played for the jury – that showed him tampering with the security system at Adcor's front door on the evening before the fire. At the end of that workday, the government's evidence showed, Stavrakis took the unusual step of inviting the last employee in the office to join him for dinner. One minute after she left the building for the restaurant, Stavrakis went directly to the main entrance. There, a video camera captured him putting tape on the latch of the door before setting the security alarm, disabling a locking mechanism that required entrants to swipe an ID card. Stavrakis then tested his work, exiting the building and reentering without swiping his own card. "In other words," the district court explained, Stavrakis confirmed that "by taping the door, [he] defeated a security feature that would have identified the person opening the door." *Id.* at *5. Stavrakis then applied more tape to the latch before resetting the alarm and departing.

Sure enough, although Adcor's alarm was disarmed with the four-digit code later that night – first in the lobby, at 12:25 a.m., and then on the shop floor, at 12:33 a.m. there was no record of an ID card being used to enter the building. Nor was surveillance video from that critical time ever found; according to Adcor employee Michael Hyatt, the relevant hard drives crashed and then, after they were set aside, were lost. In fact, many key pieces of evidence disappeared in the

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wake of the fire: Shortly after Stavrakis was called to the scene, the tape formerly observed on the front door was removed, as evidenced by a photograph of the door taken early that morning. And less than a month later – before investigators had reviewed the surveillance video showing Stavrakis at the door – the front office doors themselves were discarded and replaced. Those indications of a cover-up, the government posited at trial, combined with Stavrakis’s financial motive and his facilitation of an anonymous entry, established beyond a reasonable doubt his involvement in the arson.

With respect to Count Three of the indictment, charging fraud in connection with the \$30,000 claim for a new security system, the government’s evidence showed that the damage to the original system had been minimal: Only two of Adcor’s 11 security cameras and an alarm control panel were affected, and repairs likely would have cost less than \$3,000. Nevertheless, Stavrakis told employee Hyatt to obtain a quote for an entirely new security system, and a bid for an upgraded system – with additional cameras and better integration across components – was included in the building repair estimate submitted to Travelers. Although Stavrakis himself did not send the bid to Travelers, the government contended, the evidence established that he directed the submission of a fraudulent bid for a complete overhaul of a system that sustained only minor damage.

The defense, for its part, vigorously contested each of the government’s charges, offering up other suspects and theories of the case. From the start, when he was

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first called to the scene of the fire, Stavrakis had identified two former and allegedly disgruntled Adcor employees as potential culprits, and the defense continued to implicate the two men. Both testified at trial as to their innocence; neither was cross-examined by the defense. Stavrakis also offered an exculpatory account of his conduct at the door on the evening before the fire: According to Stavrakis, he used tape on the door – tape that he was carrying with him because he was doing home grouting work – to correct a problem with the alignment of the doors and the alarm sensors. And in any event, the defense contended, there was no video footage or other proof establishing that the arsonist actually entered through the front door, rather than from some other entry point like the hatch on the building’s roof.

Stavrakis also disputed the government’s portrayal of the financial health of his company, arguing that business was turning around in 2015 after several difficult years, and that he had a backlog of orders by the time of the fire. Moreover, he asserted, the company’s loan and forbearance agreements, painted as signs of financial distress by the government, were common practice in the manufacturing business, and he had paid off much of his debt by 2015.

As for the \$30,000 security system claim, the defense argued primarily that employee Hyatt, rather than Stavrakis, was responsible for submission of that claim; Stavrakis delegated the matter to Hyatt, and there was no evidence, the defense contended, that Stavrakis knew either the extent of the damage to the

original system or the details of the claim. The defense also argued that the claim was not fraudulent because it made clear – and Travelers would know, from its own inspections – that what was contemplated was an upgrade, and that Hyatt in any event had sent the claim only to Adcor’s insurance claim adjuster and not to Travelers itself.

At the close of the government’s case, Stavrakis moved for a judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure. The district court reserved ruling. The defense renewed its motion orally at the close of its case, and again the court reserved. After two and a half days of deliberation, the jury convicted Stavrakis on all counts.

B.

After conviction and before sentencing, Stavrakis renewed his motion for a judgment of acquittal and moved for a new trial under Rule 33 of the Federal Rules of Criminal Procedure. Stavrakis’s principal claim was that the evidence was insufficient to support his convictions: The government’s case, he argued, was entirely circumstantial, and the inferences needed to establish guilt were too speculative. In his Rule 33 motion, Stavrakis argued, as relevant here, that the district court improperly instructed the jury on willful blindness in connection with the \$30,000 security system claim, because there was no evidence that he took

deliberate action to avoid learning of a fraudulent submission.¹

In a comprehensive and well-reasoned opinion, the district court denied both motions. The court recognized at the outset that the government’s case against Stavrakis was circumstantial. *Stavrakis*, 2020 WL 607036, at *1. But circumstantial evidence, the court explained, is treated no differently than direct evidence in assessing its sufficiency. *Id.* at *2; see *United States v. Jackson*, 863 F.2d 1168, 1173 (4th Cir. 1989). So long as the evidence, viewed in the light most favorable to the government, could be accepted by a reasonable finder of fact as sufficient to support a verdict of guilt beyond a reasonable doubt, the jury’s verdict must be sustained. *Stavrakis*, 2020 WL 607036, at *2 (citing *United States v. Burfoot*, 899 F.3d 326, 334 (4th Cir. 2018)).

The court first rejected what had become Stavrakis’s primary argument: that the “central” evidence in the case – the video showing him tampering with the security system at the front door – was irrelevant because “there was no actual evidence to support the pivotal conclusion that the arsonist entered through the front door” and not through a hatch on the building’s roof or some other door. *Id.* at *9. There was indeed evidence, the court found, from which a reasonable jury could infer that the arsonist entered through the front

¹ Stavrakis raised several additional claims in his Rule 33 motion, all of which were rejected by the district court. Stavrakis has not appealed those rulings.

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door, including the fact that the alarm was disarmed first, at 12:25 a.m., in the lobby area immediately adjacent to that door. *Id.* at *9–*10. There also was the “irrefutabl[e]” fact that Stavrakis had taped the front door, and had done so before he attempted to set the alarm – so before he could have experienced the sensor alignment problem that he used to excuse his actions. *Id.* at *9. And a reasonable jury, the court finished, did not have to accept a “wildly speculative” “roof hatch scenario,” which would have had the arsonist using a ladder, on a public street, to climb onto the roof and through a hatch that evidence showed could not be opened from the outside. *Id.* at *10.

Similarly, a jury reasonably could decline to adopt Stavrakis’s unsupported theory that the fire was the work of an angry former employee. The evidence, as the court explained, was mostly inconsistent with an “ex-employee revenge fire” theory of the case. All indications were that the arsonist was familiar with Adcor’s alarm system and layout, and even where the only can of methanol in the building was stored. But he proceeded directly to an unimportant part of the building to ignite the fire, rather than targeting a more important area like the defendant’s office. *Id.*

On the other hand, the court concluded, there was ample evidence to support the government’s theory of motive. The jury was entitled to credit the government’s “overwhelming evidence of Adcor’s poor financial condition” and need for a cash infusion. *Id.* “To be sure,” the court recognized, “proof of motive does not establish guilt.” *Id.* But a reasonable jury could

consider, as bearing on Stavrakis's intent, the fact that "one person and one person only benefitted" from the fire. *Id.*

In sum, the jury had before it a compelling case – circumstantial, but compelling from which it could find, beyond a reasonable doubt, that Stavrakis knowingly participated in the arson. *Id.* at *9. The defendant's contrary arguments, the court explained, "sliced the onion into thin layers" and insisted that each be considered separately. *Id.* But the proper focus is "the totality of the evidence," which in this case was sufficient to support a guilty verdict. *Id.*; *see id.* at *3 ("Critically, the evidence must be considered 'in its totality[.]'" (quoting *United States v. Osborne*, 514 F.3d 377, 387 (4th Cir. 2008))). "Indeed, the totality [of the evidence here] illustrates the proposition that 'the whole is often greater than the sum of its parts[.]'" *Id.* at *9 (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018))).

Separately, the district court considered Stavrakis's challenge to his fraud conviction on Count Three, related to the \$30,000 security system claim. *Id.* at *11. According to Stavrakis, the evidence showed that employee Hyatt had been responsible for that claim, and the government had failed to prove that Stavrakis himself knew of or intentionally participated in any fraud. But that conclusion, the district court held, was not compelled by the evidence at trial. Instead, there was sufficient evidence of Stavrakis's involvement to support a guilty verdict: Stavrakis, as CEO of Adcor, was aware of the actual damage to

Adcor's premises; he directed Hyatt to obtain the bid for a complete overhaul of the security system; he met personally with a company that submitted such a bid; and he was copied on Hyatt's email forwarding the bid to Adcor's insurance claim adjuster. *Id.* Though the defense claimed that there was no evidence that Stavrakis ever opened and read Hyatt's email, the court concluded, the "jury was entitled to reject the defendant's effort to insulate himself from the conduct involving the bid." *Id.*

Finally, the district court rejected the claim that it had improperly given a willful blindness instruction. *Id.* at *11 n.12. The court questioned whether the defendant had preserved his objection, given that "virtually the same instruction" was embodied in another jury instruction to which Stavrakis did not object. *Id.* In any event, the court concluded that the instruction was "generated by the evidence." *Id.* And it had been accompanied by a cautionary instruction, explaining to the jury that "guilty knowledge cannot be established if the defendant had an honest belief in the truth of his representations or if he was merely negligent or foolish." *Id.*

After denying Stavrakis's motions, the district court sentenced him to a total of fifteen years' imprisonment. Stavrakis timely appealed his convictions.

II.

On appeal, Stavrakis makes two claims: first, that the district court erred in denying his Rule 29 motion

for a judgment of acquittal based on insufficiency of the evidence; and second, that the district court erred in denying him a new trial under Rule 33 because the jury was improperly instructed on willful blindness. Stavrakis raises substantially the same arguments he pressed before the district court. And for substantially the same reasons given by the district court in its opinion, we now affirm its judgment.

A.

We begin with the district court's denial of Stavrakis's motion for a judgment of acquittal under Rule 29. We review *de novo* a district court's denial of a Rule 29 motion and are "obliged to sustain a guilty verdict that, viewing the evidence in the light most favorable to the prosecution, is supported by substantial evidence." *Osborne*, 514 F.3d at 385 (internal quotation marks omitted).

On appeal, as before the district court, Stavrakis emphasizes the circumstantial nature of the government's case with respect to his participation in the fire, arguing that only impermissible speculation could have allowed the jury to infer that he was involved. But as the district court explained, circumstantial evidence "is not inherently less valuable or less probative than direct evidence," and may alone support a guilty verdict. *See United States v. Williams*, 445 F.3d 724, 731 (4th Cir. 2006). And in precisely this context, we have established that "[w]hen the government offers evidence of the defendant's motives to set [a] fire, his plan

and preparation to do so, his opportunity to carry out the plan and evidence that the fire did not occur accidentally,” direct evidence is not necessary to sustain a federal arson conviction. *United States v. Martin*, 523 F.3d 281, 289 (4th Cir. 2008) (cleaned up). It is true, as Stavrakis argues, that a jury’s “pure speculation” cannot support a guilty verdict. *See United States v. Young*, 916 F.3d 368, 388 (4th Cir. 2019). But a jury may make reasonable inferences from circumstantial evidence, *Martin*, 523 F.3d at 289, and for the reasons carefully detailed by the district court, “substantial evidence” in this case supported a reasonable inference of guilt, *see Burfoot*, 899 F.3d at 334 (describing “substantial evidence” standard); *Stavrakis*, 2020 WL 607036, at *3–*11 (describing and assessing evidence).

Stavrakis points as well to certain conflicts in the evidence – conflicts generated by defense evidence that Adcor’s financial situation had been stable and improving in the years before the fire, and that there were recurring alignment problems at the front door that could have made Stavrakis’s tape a sensible fix. It may be that a jury reasonably could have credited that defense evidence. But this jury did not, and the fact that evidence is “susceptible to alternative interpretations” does not make it insufficient. *See Osborne*, 514 F.3d at 387. As the district court well understood, “resolutions of conflicts in the evidence . . . are within the sole province of the jury and are not susceptible to judicial review.” *Stavrakis*, 2020 WL 607036, at *3 (quoting *United States v. Louthian*, 756 F.3d 295, 303 (4th Cir. 2014)).

Stavrakis also continues to press the possibility that the fire was set by some other suspect using some alternative means of entry. Circumstantial evidence, however, may be sufficient to support a guilty verdict even if it does not “exclude every reasonable hypothesis consistent with innocence.” *See Jackson*, 863 F.2d at 1173; *Stavrakis*, 2020 WL 607036, at *2 (same). And here, as the district court painstakingly recounted, Stavrakis’s alternative theories had little if any evidentiary support. *See Stavrakis*, 2020 WL 607036, at *10. Such “wildly speculative” theories, *id.*, do not undermine a jury verdict.

Neither of the two out-of-circuit cases on which Stavrakis relies compels a different result. In both, reviewing courts found insufficient evidence to sustain arson convictions of business owners, like Stavrakis, alleged to have burned their own property for financial reasons. *See United States v. Yoakam*, 116 F.3d 1346 (10th Cir. 1997); *United States v. Makriannis*, 774 F.2d 1164, 1985 WL 13743 (6th Cir. 1985) (unpublished table decision). But sufficiency cases are necessarily highly fact-specific, and in both these cases, the facts were much more favorable to the defendant than they are here. In *Makriannis*, the key evidence against the business owner – that he asked firefighters at the scene about the possibility of a gas leak, which turned out to be the source of the fire – was far more “ambiguous” and less compelling than the evidence marshalled by the government against Stavrakis. *See* 1985 WL 13743, at *2; *Stavrakis*, 2020 WL 607036, at *10–*11. And in *Yoakam*, the government had only a

purported financial motive – which the court found no evidence to support – and the fact that the defendant was the last person in the building, *see* 116 F.3d at 1349–50, as compared to the incriminating video footage and voluminous evidence of financial motive introduced here.

Stavrakis also maintains his separate challenge to his conviction on Count Three for wire fraud in connection with the \$30,000 security system claim. As before the district court, he emphasizes that he did not himself submit the bid, instead delegating the matter to employee Hyatt, and argues that the government failed to prove his knowing and intentional participation in any scheme to defraud. But as the district court held, while “[t]he jury certainly could have reached that conclusion, as vigorously urged by the defense,” it also had before it sufficient evidence to support its contrary verdict: that Stavrakis was aware of and intentionally involved in the submission of an inflated \$30,000 claim. *Stavrakis*, 2020 WL 607036, at *11 (describing evidence showing, *inter alia*, that Stavrakis was aware of the damage to Adcor’s premises from the fire, directed solicitation of a bid for a full security system upgrade, met personally with a representative of a company submitting a bid, and was copied on an email transmitting the bid).

Finally, Stavrakis argues that in assessing his Rule 29 motion for a judgment of acquittal, the district court should have applied a “rule of equipoise,” under which a court should reverse a conviction if “the evidence . . . gives equal or nearly equal circumstantial

support to a theory of guilt and a theory of innocence.” *United States v. Caseer*, 399 F.3d 828, 840 (6th Cir. 2005) (internal quotation marks omitted). The parties spend much of their briefing addressing this doctrine and a purported disagreement among the circuits as to its vitality. We have no occasion to wade into that issue, however, because viewed in the light most favorable to the government, the evidence here is not in equipoise. As the district court found, the voluminous evidence introduced over the course of this seven-week trial, taken as a whole, made a substantial and “compelling” case against the defendant. *Stavrakis*, 2020 WL 607036, at *9. And while some of the evidence was in conflict, we must assume, from the jury’s verdict, that it resolved those conflicts against the defendant. *See Burfoot*, 899 F.3d at 334. Whatever the status and precise parameters of the “equipoise” doctrine, it has no application here. *See United States v. Christian*, 452 F. App’x 283, 286 n.2 (4th Cir. 2011) (per curiam) (declining to apply rule of equipoise where conflicting evidence, viewed in the light most favorable to the government, is not in fact in equipoise).

B.

We may dispense more briefly with Stavrakis’s challenge to the denial of his Rule 33 motion for a new trial, based on an allegedly improper jury instruction. Under Rule 33, a district court may grant a new trial only if “the interest of justice so requires,” Fed. R. Crim. P. 33(a), and a court should “exercise its discretion to award a new trial sparingly,” *Burfoot*, 899 F.3d at 340

(internal quotation marks omitted). The district court’s denial of Stavrakis’s Rule 33 motion is reviewed for abuse of discretion, *id.*, as is its decision to give the challenged willful blindness instruction, *United States v. Jinwright*, 683 F.3d 471, 478 (4th Cir. 2012). We discern no abuse of discretion here.

A willful blindness instruction is warranted where “the defendant asserts a lack of guilty knowledge” – as Stavrakis does in connection with Hyatt’s handling of the \$30,000 claim – “but the evidence supports an inference of deliberate ignorance.” *United States v. Mir*, 525 F.3d 351, 358–59 (4th Cir. 2008) (internal quotation marks omitted). It is true, as Stavrakis emphasizes, that such an instruction is appropriate only if the evidence permits a reasonable inference that the defendant deliberately shielded or insulated himself from knowledge of illegality. *See United States v. Hale*, 857 F.3d 158, 168 (4th Cir. 2017). It is not enough, in other words, that a defendant should have known, but for mere negligence or recklessness, that he was involved in a crime. *Id.*; *cf.* J.A. 2329 (instructing jury that “guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish, or mistaken”). But where the “evidence indicates that [a defendant] purposely closed his eyes to avoid knowing what was taking place around him,” then a willful blindness instruction properly allows the jury to impute the element of knowledge. *United States v. Ruhe*, 191 F.3d 376, 384 (4th Cir. 1999) (internal quotation marks omitted).

Here, as the district court concluded, a willful blindness instruction was “generated by the evidence” that the government marshalled for Count Three. *Stavrakis*, 2020 WL 607036, at *11 n.12. As in *Mir*, the record allows for a reasonable inference that if Stavrakis did not have actual knowledge of the submission of a fraudulent \$30,000 claim, it was only because he “attempt[ed] to shift the blame . . . onto his employees,” first directing Hyatt to obtain a bid for a full replacement system and then taking steps to insulate himself from the ensuing process – including, he suggests, by failing to open and read Hyatt’s email regarding the bid. *See* 525 F.3d at 358–59 (finding willful blindness instruction appropriate where employer claimed unawareness of any criminal activity by employees); *Stavrakis*, 2020 WL 607036, at *11. That is the “type of situation for which a willful blindness instruction [i]s intended,” we held in *Mir*, 525 F.3d at 359, and the district court did not abuse its discretion in giving the instruction here.²

² The government argues that we should review this claim only for plain error because Stavrakis failed to preserve it below, and the district court also raised questions as to preservation. *See Stavrakis*, 2020 WL 607036, at *11 n.12. We need not resolve that issue, given our holding that the district court committed no error, plain or otherwise, in instructing on willful blindness. Nor need we address the government’s alternative argument that any error would have been harmless given the substantial evidence that Stavrakis had actual knowledge of the scheme to defraud. *See United States v. Lighty*, 616 F.3d 321, 378–80 (4th Cir. 2010) (explaining that improper willful blindness instruction is harmless where there is sufficient evidence of actual knowledge).

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III.

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED

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FILED: February 24, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4149 (L)
(1:19-cr-00160-ELH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant - Appellant

No. 20-4184
(1:19-cr-00160-ELH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the
judgment of the district court is affirmed.

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This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES
OF AMERICA,

Plaintiff,

v.

DEMETRIOS STAVRAKIS,
a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant.

Crim. No. ELH-19-00160

MEMORANDUM

(Filed Feb. 7, 2020)

This case is rooted in an arson that occurred in the early morning hours of July 29, 2015, at a two-story property located at 234 South Haven Street in Baltimore, Maryland. The structure houses Adcor Industries, Inc. (“Adcor”), a company that was solely owned by the defendant, Demetrios Stavrakis. Adcor manufactures parts for beverage and aerospace companies, the defense industry, and the military. At the relevant time, Adcor was also a federal firearms licensee. In addition to Adcor, the building houses related business entities owned by the defendant. I shall refer to these entities collectively as “Adcor.”¹ The building itself is

¹ At trial, Michael Young, a certified public accountant and partner at a public accounting firm, testified that Adcor has been a client of the accounting firm since 2006. He explained that the

owned by TJ Enterprises, LLC, which is also owned by the defendant.

In an Indictment filed March 28, 2019 (ECF 1), Mr. Stavrakis was charged with four federal offenses. The Second Superseding Indictment, filed on June 6, 2019 (ECF 94), is the operative charging instrument. In particular, the defendant was charged in Count One, under 18 U.S.C. § 844(h)(1), with use of fire to commit a federal felony, *i.e.*, wire fraud, as charged in Counts Two and Three. He was also charged with aiding and abetting under 18 U.S.C. § 2. Counts Two and Three charged wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, and Count Four charged malicious destruction of real property by fire, in violation of 18 U.S.C. §§ 844(i) and 2.

The defendant proceeded to a jury trial that began on September 9, 2019. ECF 149. It concluded on October 24, 2019, when the jury returned a verdict of guilty on all charges. ECF 216; ECF 226 (Verdict).

From its inception, the case was hotly contested. The parties filed numerous pretrial motions, and they also filed a stream of motions throughout the trial. During the trial, which consumed approximately seven weeks, the government called about 50 witnesses; ten witnesses testified during the defendant's case; and three witnesses testified during the government's

defendant owned 100% of Adcor. And, Adcor owned 100% of three other businesses and had a 50% ownership of another.

rebuttal case. About 700 exhibits were introduced into evidence.

The fact that the fire was an arson was not in dispute. However, no evidence was adduced to establish that the defendant was the torch. Rather, the government's theory was that the defendant was involved as an aider and abettor, and that he was a knowing and willful participant. He collected around \$15 million in insurance proceeds.

The government's case was largely circumstantial. At the conclusion of the government's case-in-chief, Mr. Stavrakis moved for judgment of acquittal, pursuant to Fed. R. Crim. P. 29. ECF 206. The Court reserved ruling. The defense renewed its motion orally at the close of the defense case. Again, the Court reserved.

Now pending is defendant's renewed motion under Fed. R. Crim. P. 29, combined with a motion for new trial under Rule 33. ECF 229 (the "Motion"). According to the defense, the government failed to produce sufficient evidence from which a reasonable jury could convict the defendant of any of the charges. ECF 229 at 2. As to Counts One, Two, and Four, the defense asserts, *inter alia*, that the government failed to prove, beyond a reasonable doubt, that the defendant knowingly and intentionally participated in the fire. As to Count Three, the defense contends, among other things, that the government failed to present evidence to support a finding, beyond a reasonable doubt, that the defendant knowingly caused interstate wires to be used to

transmit a fraudulent insurance claim with respect to Adcor's security and surveillance system. *Id.* at 14.

With regard to the motion for new trial under Rule 33, the defense maintains that the verdict was against the weight of the evidence; the Court erred in providing a willful blindness instruction to the jury; the government knowingly presented false evidence to the jury through the testimony of Albert "Trey" Radtke; the government failed to correct the record when now-retired Baltimore City Detective Michael Reno testified concerning his suspension without pay from the Baltimore City Police Department; and, during closing argument, the government argued facts not in evidence. ECF 229 at 20-21. The government opposes the motion. ECF 232. The defense has replied. ECF 233.

Oral argument was heard on January 24, 2019. ECF 241. At argument, the defendant maintained, among other things, that the jury was "seduced by suspicion," not evidence, and drew inferences beyond the bounds of reason. In the defendant's view, the jury simply "got it wrong."

I. The Legal Standards

Under the Constitution, an accused is protected from conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364 (1970); *see also United States v. Gaudin*, 515 U.S. 506, 522 (1995). Rule 29 of the Federal Rules of Criminal Procedure, which governs a motion for

acquittal, helps to ensure this protection. It requires that “the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.”

When, as here, the defense moved for judgment of acquittal at the close of the government’s case, and the court reserved ruling, the court “must decide the motion on the basis of the evidence at the time the ruling was reserved.” Fed. R. Crim. P. 29(b).² Nevertheless, “[a] defendant who brings a sufficiency challenge bears a heavy burden. . . .” *United States v. Clarke*, 842 F.3d 288, 297 (4th Cir. 2016); see *United States v. Palomino-Coronado*, 805 F.3d 127, 130 (4th Cir. 2015).

As the Supreme Court has explained, the court must review the evidence in the light most favorable to the government. And, the court must determine whether “any factual trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original); see *United States v. Wilson*, 118 F.3d 228, 234 (4th Cir. 1997).³

Ultimately, the jury verdict should not be disturbed “if there is substantial evidence, viewed in the

² At oral argument on the Motion, the government suggested that the Court should consider the entire record in ruling on the Motion. However, defense counsel did not signify agreement with that suggestion.

³ The elements for each offense were carefully explained to the jury during jury instructions. Therefore, I need not restate them here. I have, of course, considered the elements in connection with assessing the sufficiency of the evidence.

light most favorable to the Government, to support it.” *United States v. Burfoot*, 899 F.3d 326, 334 (4th Cir. 2018) (citation omitted); see *United States v. Bailey*, 819 F.3d 92, 95 (4th Cir. 2016). “Substantial evidence” is defined as evidence that “a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant’s guilt beyond a reasonable doubt.” *Burfoot*, 899 F.3d at 334 (citation omitted); see *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 238 (2018).

A jury may consider circumstantial evidence. The jury may also draw reasonable inferences from such evidence. See, e.g., *United States v. Bates*, 784 F. App’x 312, 326 (6th Cir. 2019). Indeed, “circumstantial evidence ‘is treated no differently than direct evidence, and may be sufficient to support a guilty verdict even though it does not exclude every reasonable hypothesis consistent with innocence.’” *United States v. Rafiekian*, 18-cr-457-AJT, 2019 WL 4647254, at *9 (E.D. Va. Sept. 24, 2019) (Trenga, J.) (quoting *United States v. Jackson*, 863 F.2d 1168, 1173 (4th Cir. 1989)).

To be sure, it is difficult to prove intent with direct evidence. But, “[i]ntent can be inferred from efforts to conceal the unlawful activity, from misrepresentations, from proof of knowledge, and from profits.” *United States v. Davis*, 490 F.3d 541, 549 (6th Cir. 2007) (citation omitted).

Critically, the evidence must be considered “in its totality. . . .” *United States v. Osborne*, 514 F.3d 377, 387 (4th Cir. 2008). Evidence is not insufficient merely

because it is “susceptible to alternative interpretations. . . .” *Id.* And, “where the evidence supports differing and reasonable interpretations,” it is for the jury to decide “which interpretation to accept.” *United States v. Moye*, 454 F.3d 290, 394 (4th Cir. 2006) (en banc).

Moreover, a court may not grant a judgment of acquittal based only on a challenge to the credibility of a witness. To the contrary, “determinations of credibility and resolutions of conflicts in the evidence . . . are within the sole province of the jury and are not susceptible to judicial review.” *United States v. Louthian*, 756 F.3d 295, 303 (4th Cir. 2014) (citation and internal quotation marks omitted).

Rule 33(a) of the Federal Rules of Criminal Procedure governs the motion for new trial. It states, in part: “Upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.”

In considering a Rule 33 motion, a court “is not required to view the evidence in the light most favorable to the government, and it may evaluate the credibility of witnesses.” *United States v. Saint Louis*, 889 F.3d 145, 157 (4th Cir. 2018). However, “[s]uch motions are disfavored, and are to be granted only when the evidence weighs heavily against the verdict.” *United States v. Chavez*, 894 F.3d 593, 607 (4th Cir. 2018) (citation and internal quotation marks omitted); *see also Burfoot*, 899 F.3d at 340 (noting that it “is the rare circumstance” for evidence to weigh heavily against

the verdict); *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003).

Indeed, a court must “exercise its discretion to grant a new trial ‘sparingly.’” *Wilson*, 118 F.3d at 237. And, mere “disagreement with the jury’s verdict [does] not mandate a new trial.” *Chavez*, 894 F.3d at 608 (internal quotation marks omitted) (citation omitted); see also *United States v. Garcia*, 855 F.3d 615, 620 (4th Cir. 2017) (stating that “the district court should only overturn a jury verdict in the ‘rare circumstance’ when a verdict is against the weight of the evidence”) (quoting *United States v. Smith*, 451 F.3d 209, 217 (4th Cir. 2006)).

II. Factual Summary⁴

Adcor fronts on South Haven Street in Baltimore, and is bordered, in part, by Gough and Grundy Streets. It contains a secured area within the building, known as the Gun Room. The building includes a large machine shop and warehouse, with several bay doors for trucks. Within the warehouse is an enclosed office known as the DNC Hut.

⁴ At this juncture, I do not have the benefit of a complete trial transcript, although I have a handful of excerpts from the trial. In presenting the factual summary, I have relied primarily on my notes from the trial as well as the parties’ submissions.

As compared to the volume of evidence presented at trial, the Factual Summary is obviously skeletal. To the extent that I have quoted testimony or argument obtained from my notes, I do not represent that the quotations are precisely accurate.

Special Agent Lisa Herb of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) explained that The National Fire Protection Association (“NFPA”) lists four classifications of fire: accidental (*e.g.*, pot on stove); natural (*e.g.*, lightening); undetermined; and incendiary, *i.e.*, arson. As to arson, the NFPA identifies six motives: vandalism, excitement, crime concealment, revenge, profit, and extremism. It is undisputed that the fire at Adcor was classified as incendiary. However, motive was an issue.

Jose Romero was on Grundy Street in the early morning of July 29, 2015. He saw smoke coming from the building at approximately 1:30 a.m. and called 911. The Baltimore City Fire Department promptly responded, and the fire was extinguished by approximately 1:50 a.m. No one was injured.

The fire originated in the DNC Hut. It measures approximately ten feet by twelve feet in size. Little of value was stored in the DNC Hut after the fire. After the fire, a five gallon can of methanol, in charred condition, was found in the DNC Hut. It was undisputed that the methanol was used to ignite the fire. Prior to the fire, that can of methanol had been stored in the beverage shipping area of the Adcor warehouse. Notably, it was used on a limited basis by shop foreman William “Bud” Kuhrmann. It was the only can of methanol stored at Adcor.

There was no sign of forced entry into the Adcor building. Nor was anything of value taken from the premises at the time of the fire. Although the fire was

contained to the DNC Hut, other parts of the premises experienced smoke and water damage. As a result of the damages, Adcor's insurer, Travelers Indemnity Company of America ("Travelers"), paid out over \$15 million on the claim.

The government spent considerable time in adducing evidence concerning the way in which Adcor employees generally gained access to the building, as well as the company procedures for opening and closing the building. It also spent significant time reviewing Adcor's security and surveillance systems at the time of the fire.

There are two glass doors at the front or main entrance to Adcor. All Adcor employees were provided with a Brivo security card that operated a magnetized lock on the front door, located below a deadbolt lock. Each card was linked to a unique number assigned to that employee. An Adcor employee could swipe his or her security card to unlock the front door with the Brivo card. If the swipe card was used to enter the building, a record was made that reflected the identity of the person who swiped in with the Brivo card, as well as the date and time of use of the Brivo card.

The front door could also be opened with a key to the deadbolt lock, which was located towards the top of the door. But, only select employees had a key. The defendant, as the CEO of Adcor, was one of them.

The front doors were also equipped with a security alarm, for which an alarm keypad was situated nearby. That keypad was one of three for the entire building, a

large structure bordered by several City streets. The keypad is used to arm and disarm the alarm by way of a four digit code. An entrant has a 30-second grace period to disarm the system.

In July 2015, the employees who knew the alarm code all shared the same alarm code. The defendant knew the alarm code. Each user of the alarm code was identified as “User 3” in the alarm records. The areas of the building covered by the alarm were designated as “partitions.” The front lobby area, adjacent to the glass doors, was called Partition One. The warehouse was designated as Partition Two.

Betsy Robak joined Adcor in May 2009. She worked in accounting. On July 28, 2015, Robak left the building at 5:51:08 p.m. She was the last office employee to leave Adcor, other than the defendant. On that day, Mr. Stavrakis had asked Robak to join him for dinner at the Blue Hill Tavern, a restaurant in Baltimore that he co-owned. Although Ms. Robak had worked at Adcor since 2009, the two had never had dinner alone until that night. She had, however, previously been to the Blue Hill Tavern with the defendant as part of a group of Adcor employees.

At the time of the fire, Adcor had eleven security cameras. The government introduced video surveillance evidence obtained from Adcor security camera No. 1, which showed the defendant at Adcor’s main entrance doors on July 28, 2015, about one minute after Robak left the building. In particular, the video showed

the defendant putting tape on the latch of the front door before he set the security alarm.

At 5:52 p.m., after applying the tape, the defendant set the security alarm by using the alarm keypad near the front doors. He then exited the building through the main doors. However, he returned a few seconds later. He entered by pulling open the front door without swiping his Brivo security card. In other words, by taping the door, the defendant defeated a security feature that would have identified the person opening the door. He then turned off the security alarm. At 5:53 p.m., the defendant applied additional tape to the same area of the front door. Then, he activated the alarm for a second time, at 5:54 p.m., and left the building for the night.

Several Adcor witnesses testified that they were unfamiliar with any problem with Adcor's front entrance doors that would cause difficulty in being able to set the alarm. Others testified to the contrary. *See, e.g.*, ECF 232-1. But, there was no testimony at all concerning any prior use of tape to fix any issue with Adcor's front entrance doors.

According to the evidence, office personnel generally were not responsible for activating the alarm at the end of the work day. Rather, the nightshift supervisor was responsible for doing so. Therefore, when Mr. Stavrakis left the building on the evening of July 28, 2015, it was unusual that he activated the alarm. And, when the defendant left the Adcor premises on July 28,

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2015, two machinists were on the shop floor. They were working the 3:00 p.m. to 11:00 p.m. shift.

Edward Thomas, one of those employees, had been asked to close up on the night of July 28, 2015. At about 5:00 p.m., he noticed the defendant looking out of an interior office window, which overlooked the shop area. At about 7:00 p.m., after the lights had been turned off in the office area, Thomas entered the lobby of the office area, near the front doors, with the intention of ensuring that the front doors were secured. To his surprise, he set off the motion detector that covered much of the lobby area.⁵ The activation of the alarm was documented by records for the security system. Having set off the alarm, Thomas disarmed it at 7:02 p.m. To do so, he used the keypad near the front doors. He then rearmed the office, designated as Partition One. However, he did not arm the shop area, designated as Partition Two, until he and his coworker left the building for the night. They exited through a shop door. The system recorded their time of departure as 11:16 p.m. The building was then dark.

There is no record of the swipe card having been used to enter through the front doors of the Adcor building on the morning of July 29, 2015, prior to the fire. Nor was there any video surveillance footage of anyone entering the building through the front lobby doors prior to the fire. But, at 12:25 a.m. on that date,

⁵ Due to a masking feature, Security Camera 1 did not capture the entire lobby area.

Partition One was disarmed. The shop floor, Partition Two, was disarmed several minutes later at 12:33 a.m.

Anthony J. Cianferano, Jr., a Baltimore City Firefighter, was one of the first responders to arrive at the scene. He arrived at Adcor between 1:40 a.m. and 1:45 a.m. He testified that the lights were on in the hall/foyer as he approached the two front doors from the inside of the building.

The defendant was notified of the fire while he was at home. He arrived at Adcor just before 3:00 a.m. on July 29, 2015. His cell phone did not link him to the Adcor premises at the time of the fire.

After the defendant learned of the fire, one of the first calls he made, at approximately 4:11 a.m., was to Randolph (“Randy”) Goodman, a public adjuster with whom the defendant was familiar.⁶ Mr. Goodman is a principal with the firm Goodman-Gable-Gould/Adjusters International (“GGG”). According to the evidence, a public adjuster helps navigate the insurance claim process and assists an insured in maximizing the insured’s recovery in accordance with the terms of the applicable insurance policy. As noted, Adcor was insured through Travelers.

Special Agent Herb was notified of the fire by Detective Michael Reno of the Baltimore City Police

⁶ The Court did not permit the government to introduce evidence of a fire in 2007 at another building associated with the defendant, for which a substantial insurance claim was paid, and for which Mr. Goodman assisted the defendant.

Department (“BCPD”).⁷ Reno arrived at Adcor at about 2:00 a.m. on July 29, 2015. Agent Herb arrived at Adcor at about 4:00 a.m. Among other things, she spoke with the defendant, who was already at the scene. In response to Herb’s inquiry, the defendant identified two former, disgruntled employees, one of whom was Michael Brown.

The defendant did not disclose to Agent Herb that he had taped the front door that night because it was malfunctioning. Moreover, there was no evidence that anyone other than the defendant knew of the tape on the front door. Yet, as of 4:39 a.m., there was no tape on Adcor’s front entry door, as reflected in a photograph of the front door that Agent Herb took at that time.

Agent Herb asked Adcor senior employee Michael Hyatt to provide video surveillance for a 24-hour period surrounding the fire. Hyatt began working at Adcor in 1997, at the age of 19. By 2015, he held the position of Vice President and was regarded as a senior officer. He was also in charge of “IT.” And, he is a close associate of the defendant.

On the afternoon of July 29, 2015, Hyatt furnished a disk with the video surveillance to law enforcement. It covered the period from 4:00 a.m. on July 28, 2015, through 8:00 a.m. on July 29, 2015. Agent Herb did not review the video at that time, however. And, it was later determined that the disk did not contain footage of activity at the front doors or lobby between 12:25

⁷ Reno retired from the BCPD in June 2019, after 25 years of service with the BCPD.

a.m. and 12:33 a.m. on July 29, 2015. There was also a gap in footage for Security Camera 1 from 6:00 p.m. on July 28, 2015, to 2:00 a.m. on July 29, 2015. Thus, the video did not reflect employee Thomas setting off the alarm at about 7:00 p.m. on July 28, 2015.

A few days after the fire, Travelers requested the actual Hard Disk Drives. But, Adcor was unable to produce the two Hard Disk Drives that stored the relevant video surveillance footage, as requested by Travelers. According to Hyatt, on July 30, 2015, the server crashed, so he replaced the Hard Disk Drives and left the old ones on a table near the server, located in a second floor office. They disappeared and were never found.

As of July 30, 2015, neither Travelers nor law enforcement had requested production of the actual Hard Disk Drives. It was not until a few days after the fire that Travelers asked Adcor for them. By that time, they could not be located. The cleaning and restoration crews working at Adcor denied disposing of any Adcor property.

The parties stipulated that Travelers recovered 10 Hard Disk Drives from an office area of Adcor on September 11, 2015. They were “loose,” that is, they were “not currently installed in any server or computer.” See Govt. Exhibit 120.

On Monday, August 3, 2015, while Hyatt was on vacation with his family at a beach in North Carolina, ATF Task Force Officer Hodges asked Hyatt for the Hard Disk Drives. And, on August 6, 2015, TFO Hodges

showed up at Hyatt's beach place, without having told Hyatt that he would do so.

ATF Specialist Steve Greene, a digital forensic analyst, was received as an expert. He opined that if the Hard Disk Drives had been available for inspection, he would be able to determine if any files had been deleted.

James McKinnes, a Certified Fire Investigator and Special Agent with ATF, took numerous photographs at Adcor on April 3, 2019. He also inspected the roof hatch, by gaining access to the roof through the kitchen on the second floor. He noted there is no handle on the outside of the hatch, *i.e.*, on the roof side.

Eric Huzzy, an insurance restoration contractor, was at Adcor on several occasions, beginning soon after the fire. He photographed the roof hatch, and also noted that the access handle is located on the interior of the hatch, inside the building.

Douglas Fisher, a Fire Protection Engineer with more than two decades of experience, visited Adcor on August 3, 2015, and again on August 28, 2015, on behalf of Travelers. Among other things, he examined Adcor's security and surveillance systems. The company did not have a fire suppression system. By the time Fisher returned to Adcor in late August of 2015, Adcor's front doors had been replaced. Moreover, those doors, which had supposedly malfunctioned on July 28, 2015, had been discarded. And, according to Fisher, only two of Adcor's eleven security cameras were

damaged due to the fire. *See* Government Exhibits FE 32 and FE 35.

Michael Brown joined Adcor in 2000. Brown's wife, his father, and his two sons, also worked at Adcor at varying times. They all left employment with Adcor on the same date in September 2013. The departure was not amicable.

After the fire, the defendant implicated Brown by way of statements he made to Agent Herb and ATF Task Force Officer Dexter Hodges. Similarly, Fisher attended an interview of the defendant on August 28, 2015, and noted that the defendant discussed Brown and his wife and referenced a disparaging matter involving Ms. Brown. And, Goodman testified that the defendant told him that a disgruntled employee named Brown may have started the fire.

Mr. Brown and his wife both testified for the government. Electronic evidence showed that Mr. Brown was at his home at the time of the fire. And, Brown denied any wrongdoing.

According to Brown, he developed about 30 patents that are owned by Adcor. Brown also explained that from approximately 2005 to 2010, Adcor made upper receivers for Colt's M-4 weapons.

Brown recounted that he had been close with the defendant for many years. But, by the time of Brown's departure in 2013, his relationship with the defendant had deteriorated. In fact, in 2014, the defendant sued Brown, claiming Brown misappropriated intellectual

property that belonged to Adcor. The case eventually settled.

Brown testified that at 2:19 a.m. on July 29, 2015, he learned of the fire from the police. He recalled that he went to the scene later in the day, because he and his family were going to dinner in that area for his son's birthday. He also claimed that until September 2019, he was unaware of any rumors concerning his wife's alleged indiscretion with an Adcor employee. It was one of the prosecutors who told him of the "rumor."

Brown was familiar with the roof hatch at Adcor. He maintained that it could not be opened from the outside.

The government devoted substantial time to the painstaking if not tedious presentation of voluminous evidence concerning the financial status of Adcor. The evidence pertained to the period beginning in 2010, when Adcor lost a lucrative contract with Colt Industries, through the time of the fire. The parties disagreed about the financial condition of Adcor and the interpretation of that evidence.

Although proof of motive does not establish guilt, it may be considered by a jury as bearing on intent. The evidence, in the light most favorable to the government, showed that in the years preceding the fire, and continuing through the time of the fire, Adcor's financial condition was dire. This constituted significant evidence of motive.

According to the government's evidence, consisting of records and the testimony of numerous witnesses, Adcor suffered total operating losses of over \$7.6 million between 2011 and June 2015, and from January to June 2015, it had a six-month operating loss of \$718,679.13. Moreover, Adcor was repeatedly in default as to various loans, necessitating forbearance agreements with several lenders at varying times, including M&T Bank; JOCO Financial, LLC; 1st Mariner Bank; and Bank of America. Adcor employees and suppliers testified that between 2012 and July 2015, Adcor also failed to make timely payments to several of its suppliers.

The defendant personally borrowed over \$5 million, and used some of the money to repay loan obligations. To satisfy debt obligations, Adcor also sold its valuable Beverage Division, which was profitable, to Adcor Packaging Group, of which the defendant owned only 50%. And, the evidence suggested serious concerns as to Adcor's viability.

As noted, two of Adcor's surveillance cameras had been damaged during the fire. Hyatt testified that the defendant asked him to obtain bids for Adcor's security system. Hyatt obtained a bid from Strat Security, which Hyatt described as "a little bit of an upgrade." The defendant personally met with Strat Security about the bid. Hyatt sent the bid from Strat Security to Goodman via email on September 14, 2015, and copied the defendant on the email. In the email, Hyatt asked "how to proceed." He testified that he was not

aware that the bid he sent to Goodman would be forwarded to Travelers.

Travelers conducted an Examination Under Oath (“EUO”) of the defendant on October 21, 2015. The transcript was read to the jury and a short excerpt of the audio was played after the government located the recording. At the EUO, the defendant claimed that the “throat was broke” on the front door when he left the building on July 28, 2015. For that reason, he taped it. Mr. Stavrakis explained that he set the alarm but he then disarmed the alarm because it was not properly set, and then he rearmed it. Further, he stated that he happened to have the tape with him because he was doing grout work at home.⁸

Ultimately, Travelers paid approximately \$15 million on the Adcor insurance claim. The insurance money was used to replace several old machines at Adcor with new, state of the art equipment that cost almost \$2 million. In addition, the defendant transferred about \$600,000 to an account in his wife’s name. The money was used to pay off private loans procured before the fire. And, the defendant made several purchases of personal property between August and December of 2015, such as a BMW for almost \$53,000; a Harley-Davidson motorcycle for Adcor employee Bud Kuhrmann for \$25,500; a Mercedes-Benz sport utility vehicle for almost \$100,000; a men’s \$15,000 watch for

⁸ As noted, the video showed that the defendant taped the door before attempting to arm the alarm. And, when the defendant re-entered the building, he was able to open the door without swiping his Brivo card.

Adcor's second in command, employee Mike Hyatt; a ladies' diamond ring for \$12,500; and a men's watch for \$7,800.

Additional facts are included in the Discussion.

III. Discussion

As noted, the defendant contends that his convictions rest on a mountain of assumptions. His taping of the front door at Adcor is central to all of the contentions.

According to the defense, the evidence that Mr. Stavrakis taped the door "is patently irrelevant if the arsonist entered Adcor *any* other way," *i.e.*, not through the front door. ECF 229 at 7 (emphasis added by defendant). In its view, defendant's taping of the front door was "wholly irrelevant" and "innocuous," unless the arsonist entered through the front door. ECF 233 at 9.⁹ And, the defendant hammers the point that "there is no evidence that the arsonist actually entered Adcor using that point of entry." ECF 229 at 8. In reply, the defendant asserts that "there was no actual evidence to support the pivotal conclusion that the arsonist entered through the front door, only an assumption that is not sufficiently connected on known facts to give rise to a permissible inference." ECF 233 at 9.

The defendant observes that the building had "numerous potential points of entry" and thus the

⁹ In its opening statement to the jury, the defense characterized the incident of the taping of the door as a "red herring."

factfinder could not say “with substantial assurance that it is more likely than not that the intruder *must* have come through the front door simply because the keypad next to the front door *may* have been used to disarm the alarm.” *Id.* He adds that the government cannot convict on the basis of a “possibility.” *Id.*

According to the defendant, “the roof hatch is the most plausible point of entry. . . .” ECF 233 at 9. He characterizes the roof hatch as “the other well-known point of entry that could have allowed an intruder to access that same keypad without entering through the front door or being captured on the camera system. . . .” *Id.* at 8.

Moreover, the defense notes that the alarm could have been disarmed from any of the three keypads in the building. It contends that merely because Partition One was disarmed first, this does not prove entry to the building at the front door. In the defense’s view, the government has merely assumed that the arsonist entered the building through the front door, without any factual basis. ECF 229 at 7-8. In the absence of evidence as to the point of entry, argues the defense, the government’s case “crumbles.” ECF 233 at 9.

In effect, the defense suggests that the government generated smoke, but no fire. The defense has sliced the onion into thin layers, asking the Court to consider each layer separately. In doing so, the defense ignores the totality of the evidence, which constitutes a compelling circumstantial case. Indeed, the totality illustrates the proposition that “the whole is often

greater than the sum of its parts. . . .” *District of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 588 (2018) (discussing probable cause); see *United States v. Drummond*, 925 F.3d 681, 687 (4th Cir. 2019) (same).

The evidence irrefutably showed that the defendant used tape at the front door, before he ever attempted to set the alarm. In other words, he taped the door without having experienced an actual alarm problem. This enabled him to bypass the swipe card system, the use of which is linked to a particular employee.

The intruder disarmed Partition One first, and several minutes elapsed before Partition Two was disarmed. Although Partition One could have been disarmed at one of three keypads located throughout the rather large building, the jury was entitled to infer that the intruder would first disarm the area where he/she was located. The front doors are adjacent to Partition One, and Partition One was disarmed first. In this regard, the jury could infer that if the intruder was in the vicinity of Partition Two, he or she would not have disarmed Partition One eight minutes *before* disarming Partition Two (12:25 a.m./12:33 a.m.).

In much the same way, the jury did not have to accept the roof hatch scenario. To make use of the roof hatch, the jury understood that it would have been necessary to use a ladder on a public street to gain access to the roof.¹⁰ And, the evidence indicated that it could not be opened from the outside. Although it was dark

¹⁰ The defendant’s demonstrative evidence, played first in opening statement, showed the use of a ladder to access the roof.

when Mr. Romero reported the fire, he never saw a ladder outside the building. Miguel Hernandez, who lived at 218 S. Haven Street in 2015, also testified for the government. And, he never saw anyone with a ladder. The intruder also would have had to come down from the roof by way of an internal staircase into the kitchen, and then maneuver to avoid the motion detector in the lobby to reach a first-floor keypad to disarm the alarm. As the government puts it, the defense's theory is "wildly speculative. . . ." ECF 232 at 21.

To be sure, proof of motive does not establish guilt. But, the jury was entitled to consider the overwhelming evidence of Adcor's poor financial condition as a motive bearing on intent. And, as the government observes, "one person and one person only benefitted from this fire. . . ." ECF 232 at 27.

As indicated, the fire occurred in an enclosed office area in the warehouse, known as the DNC Hut. The jury was entitled to conclude that the person who entered the building was quite familiar with the structure and Adcor itself. The individual knew how to disarm the alarm; clearly was familiar with the layout; and knew of the only can of methanol, including where it was stored. The arsonist also proceeded to a relatively unimportant part of the building to ignite the fire. The jury could have concluded that a person motivated by revenge would have proceeded to a more important target area, such as the defendant's office.

The defense relies on *United States v. Makriannis*, 774 F.2d 1164 (6th Cir. 1985) (unpublished table opinion),

stating that it “bears uncanny resemblance” to the case sub judice. ECF 229 at 12.¹¹ There, the Sixth Circuit reversed the conviction of a restaurant owner accused of arson in order to collect insurance proceeds. In that case, the fire was arson; the business was in poor financial condition; the security system to the restaurant had been disarmed; there was no forced entry; the defendant was at home at the time of the fire; and there was suspicion of the accused as a result of questions he asked firefighters about whether a gas line was involved in the fire before the defendant would have known that detail of the investigation.

In reversing the defendant’s conviction based on insufficiency of evidence, the Sixth Circuit said, *id.* at *1-2:

The evidence clearly establishes arson. The evidence is not sufficient, however, to prove beyond a reasonable doubt that it was Markriannis who committed the arson. We find, at best, that the government’s case presented evidence sufficient to support equally persuasive inference of both guilt and innocence. This equipoise cannot sustain a criminal conviction. *United States v. Leon*, 534 F.2d 667, 677 (6th Cir. 1976).

There is sufficient evidence in the record to support the conclusion that defendant had both motive and opportunity to commit the arson. The government argues that it also

¹¹ According to West Law, it does not appear that the case has been cited in any judicial opinion.

established defendant's guilty knowledge of the arson beyond a reasonable doubt. The record does not support the government's contention in this regard.

Makriannis relied on *United States v. Leon*, 534 F.2d 667 (6th Cir. 1976). But, as the government points out, the Sixth Circuit has overruled *Leon*. See *United States v. Ellerbee*, 73 F.3d 105, 107 (6th Cir. 1996); *United States v. Stone*, 748 F.2d 361, 363 (6th Cir. 1984). The cases are also factually distinguishable. For example, the Sixth Circuit considered ambiguous what had been a key piece of the government's evidence, concerning the proof of an actual gas leak.

The defendant lodges additional challenges to his wire fraud conviction in Count Three, which concerned the submission of the bid to upgrade the surveillance and security systems. Mr. Stavrakis contends that the proof failed to establish that he had the requisite intent. The jury certainly could have reached that conclusion, as vigorously urged by the defense. But, that conclusion was not compelled by the evidence.

The defendant, the CEO of Adcor, was quite aware of the damage to Adcor's premises as a result of the fire. It was the defendant who told Mike Hyatt to obtain a bid because of damage to the security and video surveillance systems, and to submit the quote to Mr. Goodman. The defendant personally met with a representative of Strat Security, a company that submitted such a bid. It would have been clear from those discussions that an upgrade was contemplated. The bid

included several new cameras, although only two were damaged in the fire.

Mr. Hyatt forwarded the bid to Mr. Goodman by email on September 16, 2015, as directed. He wrote, “Let me know how to proceed.” Mr. Hyatt copied the defendant on this email to Mr. Goodman. Thereafter, Mr. Goodman forwarded the bid from Strat Security to Ed Cameron, his building estimator. In turn, Mr. Cameron sent the bid to Travelers on October 22, 2015, along with other estimates.

The defense claims there is no evidence that the defendant actually received, opened, or read the email that Hyatt sent with the bid. ECF 229 at 17. Moreover, the defense claims that the public adjuster did not obtain approval from the defendant before submitting items for payment. *Id.* at 16. Further, according to the defendant, the government’s theory is flawed because the defendant would have known that Doug Fisher inspected the system for Travelers in the weeks after the fire, and he knew that the entire camera/surveillance system did not need to be replaced. *Id.* at 17. And, the defendant insists that it is clear on the face of the bid that it constituted an upgrade, so as to defeat any notion of an inflated claim. *Id.* at 18.

The jury was entitled to reject the defendant’s effort to insulate himself from the conduct involving the bid. It was entitled to conclude that the defendant directed Hyatt to obtain the bid for an upgrade and to submit it under the guise of a covered loss.

As for the Motion for New Trial, I am mindful of the standard of review, which I set forth earlier. For the reasons stated by the government in ECF 232, and for the reasons discussed at oral argument on January 24, 2019, I see no merit to the defendant's contentions.¹²

The Motion is denied. An Order follows.

Date: February 7, 2020

/s/

Ellen L. Hollander

United States District Judge

¹² To illustrate, the defense claims that the Court erred by propounding a willful blindness jury instruction. As I see it, the instruction was generated by the evidence. In any event, virtually the same instruction is embodied in the wire fraud instructions, to which the defendant did not object. Moreover, the jury was cautioned that guilty knowledge cannot be established if the defendant had an honest belief in the truth of his representations or if he was merely negligent or foolish.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES
OF AMERICA,

Plaintiff,

v.

DEMETRIOS STAVRAKIS,
a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant.

Crim. No. ELH-19-00160

ORDER

(Filed Feb. 7, 2020)

On January 24, 2020, the Court heard argument in connection with the Motion for Judgment of Acquittal and for New Trial (“Motion”) filed by defendant Demetrio Stavrakis (ECF 229).

For the reasons stated by the Court in the preceding Memorandum, and on the record, in open court, on January 24, 2020, the Motion is DENIED.

So ORDERED, this 7th day of February, 2020.

/s/

Ellen L. Hollander
United States District Judge

App. 54

FILED: April 5, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4149 (L)
(1:19-cr-00160-ELH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant - Appellant

No. 20-4184
(1:19-cr-00160-ELH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIOS STAVRAKIS, a/k/a Dimitrios Stavrakis,
a/k/a Jimmy

Defendant - Appellant

App. 55

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Motz, and Judge Harris.

For the Court

/s/ PATRICIA S. CONNOR, CLERK
