No. __-____

IN THE

Supreme Court of the United States

ANTHONY ZOTTOLA, SR.,

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

PETITION FOR A WRIT OF CERTIORARI

Theodore S. Green
Counsel of Record
GREEN & WILLSTATTER
Attorneys for Petitioner
200 Mamaroneck Avenue
Suite 605
White Plains, New York 10601
914-948-5656
theosgreen@msn.com

February 5, 2026

QUESTIONS PRESENTED FOR REVIEW

1. Whether a defendant's right to present a defense is violated when he is precluded from offering a declarant's out-of-court, self-inculpatory narrative that tends to demonstrate third-party culpability where the circumstances clearly indicate the statement's trustworthiness; whether the statement offered by Petitioner was admissible under Fed. R. Evid. 804(b)(3) because it was, in context, a declaration against penal interest?

2. a) Does empaneling an anonymous jury violate the presumption of innocence, the right to a fair and public trial, and the right to an impartial jury, in the absence of grounds for finding that alleged obstructive conduct of the defendant related to tampering with or threatening witnesses, jurors, or other trial participants; b) in determining whether to empanel an anonymous jury in a criminal case, must the court consider alternatives to full anonymity and state its reasons for denying such relief?

PARTIES TO THE PROCEEDING

Petitioner Anthony Zottola, Sr. was an appellant below. Himen Ross was an appellant below. Herman Blanco was a defendant in district court and is an appellant in a pending appeal to the court of appeals, under docket 22-3211, from a judgment of conviction upon a guilty plea, and Blanco has no interest in the petition. Bushawn Shelton, Arthur Codner, Kalik McFarlane, Alfred Lopez, Branden Peterson, Julian Snipe and Jason Cummings were defendants in district court but did not participate in proceedings in the court of appeals and have no interest in the petition.

RELATED PROCEEDINGS

United States District Court, Eastern District of New York

> *United States v. Shelton, et al.*, 18 CR 609 (HG), Judgment entered as to Anthony Zottola, Sr. on April 18, 2023.

United States Court of Appeals for the Second Circuit

> *United States v. Zottola, et al.,* 23-6378 (Con), 23-6401 (Con). Summary order filed November 10, 2025.

TABLE OF CONTENTS

Page

APPENDIX

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Page(s)

Statutes

Rules

Constitutional Provisions

Page(s)

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Anthony Zottola, Sr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. *infra*, 1a-16a), is not published in the Federal Reporter but is available at 2025 U.S. App. LEXIS 29453 and 2025 WL 3137727. Oral rulings of the district court set forth at App., *infra*, 17a-19a, and App., *infra*, 22a-25a, are unpublished.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const., Amend. V

U.S. Const., Amend VI

Fed. R. Evid. 804(b)(3)

The text of the aforementioned provisions is set forth at App., *infra*, 26a-29a.

STATEMENT OF THE CASE

On October 4, 2018, Sylvester Zottola ("Sylvester") was shot and killed while waiting in the drive-through lane of a McDonald's restaurant in the Bronx. Earlier, on July 11, 2018, one of his sons, Salvatore Zottola ("Salvatore") was shot and wounded outside his home. In June 2019, Sylvester's other son, Petitioner Anthony Zottola, Sr., was arrested and charged with participating in a murder-for-hire scheme directed at Sylvester and Salvatore, along with related conspiracy and firearm counts. Petitioner was convicted after a jury trial.

Sylvester was a long-time associate of the Bonanno organized crime family of La Cosa Nostra (LCN). In collusion with LCN, Sylvester operated an illegal gambling enterprise, installing his "joker-poker" machines at various spots in the Bronx, from which Sylvester would collect the proceeds and share these profits in the form of "protection" money (also known as "tribute") to his mob associates. Over the years, Sylvester parlayed his profits from these enterprises into the purchase of multi-family, income-earning residential buildings. Salvatore worked with his father in the illegal gambling business, while Anthony worked with his father in the legal real estate business. G.A. 85-105.[1]

---

1. Citations denoted "J.A. " are to the joint appendix of appellants below (Doc. Nos. 107, 108); "G.A." to the government's appellate appendix below (Doc. Nos. 143, 144, 145); "Tr." to the district court trial transcript; "Zottola Br" (Doc. No. 105) to Petitioner's opening brief to the court of appeals; "Govt. Br." (Doc.

The prosecution's theory was that Petitioner had hired one Bushawn Shelton to carry out the attacks on his father and brother, and that Shelton recruited accomplices from a street gang to which he belonged. The prosecution claimed Petitioner's motive was to take over his father's real estate business, although trial evidence established that the father had, years earlier, transferred his properties to a trust administered by Petitioner's sister and an accountant, with Sylvester's three children each having an equal interest in the trust assets. Zottola Br. at 12; Zottola Reply Br. at 1; Tr. 1765-1768, 6565-6580. The prosecution's proof rested in large part on the timing of cryptic and coded text messages between Shelton's cell phone and a phone attributed to Petitioner, which the prosecution claimed evidenced the planning or execution of the attacks.

Petitioner's defense was one of third-party culpability. To advance that defense, he sought to offer evidence of Sylvester's ongoing dispute with his Mafia sponsors and an Albanian organized crime group over his profitable gambling business.

Sylvester had a close relationship with Vincent ("Vinny Gorgeous") Basciano, a high-ranking member of the Bonanno family who had served as acting boss before being convicted on racketeering and murder charges and sentenced to life imprisonment. Despite the public attention directed at Basciano for his

---

No. 142) to the government's opening brief; "Zottola Reply Br." (Doc. No. 166) to Petitioner's reply brief; and "Ross Br." (Doc. No. 113) to the opening brief of appellant Himen Ross.

many crimes, Sylvester and Salvatore remained in phone contact with the imprisoned Basciano, and Sylvester would also use Basciano's wife as an intermediary to communicate about Basciano's continued financial interest in Sylvester's gambling enterprise. G.A. 107-110.

The 2018 shootings were preceded by a series of earlier attacks on Sylvester, beginning with a non-deadly assault with fists committed against Sylvester in September 2017. Earlier that summer the Albanian mob took over one of the locations where Sylvester had installed his gambling machines, and refused to allow Sylvester to retrieve the machines. G.A. 115-117, 403-404.

At trial, Salvatore testified that after the Albanians took over the spot, his father contemplated a lawsuit, but dropped the idea. G.A. 115-117. Salvatore claimed not to know whether his father sought redress from an organized crime figure named Richard Deluca after being muscled out of the spot. Salvatore acknowledged that in 2018, his father stopped making protection payments for the gambling business, but Salvatore attributed this decision to Sylvester's belief that his family was not being adequately safeguarded following the June 2018 shooting of Salvatore. G.A. 93-107, 191, 203-209.

To rebut Salvatore's testimony, and to develop evidence that the attacks were the work of organized crime, the defense sought to introduce, pursuant to Fed. R. Evid. 804(b)(3), statements that Sylvester had made in proffers to the FBI on July 12 and July 16,

2018. These proffer sessions occurred shortly after the shooting and wounding of Salvatore in an effort to identify plausible suspects. J.A. 332-42, 343-53, Govt. Br. 30-32.

The court allowed evidence from the July 12 proffers, but not from the July 16 proffer. App., *infra*, 22a-26a. Accordingly, the jurors heard a stipulation based on the July 12 proffers, and which read as follows:

> Sylvester Zottola had a conflict with an individual named Martin Cekaj in December of 2017 over joker poker machines located at Bruxelles Lounge . . . . Bruxelles had just opened at that time but was previously called Pappi Nice Pub and operated under the protection of Vincent Basciano. When the bar was called Pappi Nice, the Zottola[ ]s collected money from a jukebox and Joker Poker and gave a portion of the earnings to Basciano, through his wife Angela. The operator of the new Bruxelles Lounge, Eljon Perubi, told Sylvester Zottola that the machines were now being serviced and collected by Cekaj. Sylvester Zottola passed word to Basciano that his location was being taken over. Angela Basciano then told Zottola that Vincent Basciano wanted him to let Cekaj take over the location. Zottola was willing to let Cekaj take over the location but wanted the machines he owned removed. Perubi claimed he rented [the machines] from the

> landlord and that Zottola could not have them back. Zottola threatened to sue to the landlord, but did not follow through.

J.A. 404-406, G.A. 403-404.

The court, however, precluded Sylvester's statements in the July 16 proffer. App., *infra*, 22a-25a. The July 16 statement, as recorded by the FBI was as follows:

> With reference to the September 2017 incident . . . ZOTTOLA reached out to BASCIANO's wife, ANGELA BASCIANO (ANGELA), and advised the Albanians took over BASCIANO'S gambling spot on Allerton Avenue in the Bronx. Subsequently, ANGELA got back to ZOTTOLA informing that BASCIANO directed [sic] to give up the gambling spot to the Albanians. ZOTTOLA then reached out to [Richard, a.ka. "Richie"] DELUCA, to settle down the situation with the Albanians. DELUCA, who ZOTTOLA pays protection money to, was unable to assist since the Albanians took control of the establishment rather than anyone associated with LCN.
>
> ZOTTOLA has been kicking up money to DELUCA for protection since 2002. The last payment to DELUCA was in the amount of $800.00. As of two months ago, ZOTTOLA stopped making protection payments to DELUCA due to DELUCA's inability to

> protect ZOTTOLA's gambling spots. . . . ZOTTOLA makes a payment of $500-$600 a week to BASCIANO's wife, ANGELA.

Govt. Br. 31-32.

In precluding this statement, the court found that the first two sentences were cumulative of the July 12 statement. As to the remainder of the statement, the court found that references to Sylvester reaching out to Deluca, and the references to protection money, were not "declarations or statements against interest. If anything, if you're paying protection money, you're a victim and not a perpetrator of a crime at that point. I don't see how that's a declaration against interest." In unsuccessfully arguing to the contrary, defense counsel noted that the statements involved admissions by "a known associate of organized crime" who "routinely pays protection money for profitable gambling establishments to members of organized crime over the course of decades" making him "more in the nature of a co-conspirator than a victim." The statements were "an admission of [Sylvester's] participation in an organized crime conspiracy, in a RICO conspiracy." App.*, infra*, 22a-25a.

Sylvester and Salvatore continued to operate the joker-poker business after Sylvester had stopped making protection payments. When Salvatore was shot and wounded in July 2018, he had earlier made a stop at one of their gambling spots. On the day Sylvester was shot to death, he had earlier visited that same gambling spot. G.A. 118-122.

On appeal, Petitioner argued that the district court abused its discretion in precluding the July 16 statement, that Sylvester's admissions that he had reached out to a Mafia figure for help in warding off encroachments on his criminal enterprise (and his subsequent decision to withhold protection payments) were against his penal interest, and that the statements were trustworthy because they were made during proffers where the objective was to aid the FBI in identifying plausible suspects in the attacks on Sylvester and his son. Petitioner argued that preclusion of the statement denied him his right to effectively present a defense of third-party culpability, citing to *Holmes v. South Carolina*, 547 U.S. 319 (2006). Zottola Br. 33-41; Zottola Reply Br. 1-16.

Preclusion of the statement was prejudicial, Petitioner argued, because the July 16 statement showed that Sylvester, after being directed by Basciano to give up the spot to the Albanians, flouted this order by going to another Mafia figure to seek redress, and his dissatisfaction with the Mafia's ability to protect his spots against encroachment culminated in his decision to withhold protection money. Thus, the statement established that, coincident with the series of attacks on Sylvester and Salvatore, there was an ongoing dispute that put Sylvester at cross purposes with both his Mafia handlers and the Albanian mob. By precluding the July 16 statement, though, the jury never heard this narrative. Rather, the jury heard a false and watered-down version (through the testimony of Salvatore and the July 12 statement) that had Sylvester simply quietly obeying Basciano's order

to give up the spot to the Albanians with no further controversy. Zottola Br. 33-41; Zottola Reply Br. 1-16.

Anonymous and Partially Sequestered Jury

Prior to jury selection, the government moved for an "anonymous and partially sequestered jury." J.A. 135-58. The government wanted the names, addresses, and places of employment to be withheld from the parties and their attorneys, and to have the jurors eat lunch together and be accompanied in and out of the courthouse by United States marshals. J.A. 136.

In opposing the application, the Petitioner argued that empaneling an anonymous jury would violate Petitioner's right to a fair and public trial, and to an impartial jury, as guaranteed by U.S. Const., Amends. V and VI. and there was no "strong reason" to believe the jury required protection. Petitioner argued that the violent nature of the charges "do not automatically trigger the prejudicial relief the government seeks" nor did the fact that the case had been reported on in the news media. Nor did "bare allegations" that a trial defendant had connections to organized crime (the government contended that Shelton and other co-defendants were members of the "Bloods street gang", J.A. 141), or "the simple likelihood of media attention." J.A. 160-61, 164. Moreover, the defense argued that the government had failed to allege attempts to tamper with the judicial process, or to intimidate, bribe, or commit vio-

lence against witnesses or jurors. Nor did the government contend that any of the defendants (or the "Bloods street gang") had engaged in such conduct in the past. J.A. 161, *see* J.A. 141-143. On the contrary, the examples cited by the government confirmed "nothing of the sort" and fell well below the kind of threats to the judicial process that courts have recognized in warranting such protective measures for a jury. The government cited Anthony's alleged "attempts to monitor the investigation in this case by accompanying his father to meetings with law enforcement" and a letter that Anthony, after his arrest, wrote Salvatore stating that "no matter what [they] were there for each other." As to Shelton (who ended up pleading guilty before trial) the government cited his wife's alleged attempt to recover a cell phone from law enforcement that "contained incriminating communications", Shelton's possession of a cell phone in prison which he "used to communicate with Anthony" (none of which were alleged to involve attempts to interfere with the judicial process), and allegations that Shelton had understated the amount of cash he had when submitting a financial affidavit for appointment of counsel (which led to a separate perjury charge against Shelton). J.A. 162-166.

The defense argued granting the government's motion in the absence of the requisite "strong reason" would undermine the defendant's trial rights and the presumption of innocence. J.A. 166.

The defense argued, in the alternative, for the release of juror names and other information to the par-

ties only. J.A. 164-165, App., *infra*, 18a-19a. The court denied that alternative relief: "I've considered it. I've never done it. I've considered it. I've talked to a couple of colleagues about it. I'm not going to do it. We are going to have an anonymous jury." App., *infra*, 18a-19a.

The court granted the government's application in its entirety. App., *infra*, 17a-18a. At trial, the court instructed the jurors that "[r]outinely, in cases like this one that attract public media attention, for your privacy we assign you a number and put your names to the side. Your answers on the first and second pages of the questionnaire, which you will see, ask for your name, your phone number and your address. Those will be seen only by a limited number of court personnel so that the folks in the jury room know how to get ahold of you if they need to reach you." App., *infra*, 20a-21a.

On appeal, Petitioner argued that the district court abused its discretion in empaneling an anonymous jury as unwarranted by the government's proffer (including that the allegations of obstructive conduct were insufficient), and that the court further abused its discretion in failing to implement less restrictive alternatives to full anonymity, such as disclosure to the parties or their counsel, and that Petitioner was accordingly deprived of his rights under U.S. Const.,

Amends. V and VI. Zottola Br. 59-63; Zottola Reply Br. 28-30; Ross Br. 33-35.[2]

Decision of Court of Appeals

In a November 10, 2025, summary order, the United States Court of Appeals for the Second Circuit affirmed the judgment. On the question of the admissibility of Sylvester's statement, the court wrote:

> The district court acted within its discretion in excluding Sylvester's July 16 proffer statement as it was not self-inculpatory. Rule 804(b)(3) "does not allow admission of nonself-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory." *Williamson v. United States*, 512 U.S. 594, 600–01 (1994). Here, the precluded statement refers to Sylvester's ceasing protection payments to the mafia. As the district court correctly noted, "if you're paying protection money, you're a victim and not a perpetrator of a crime." Joint App'x at 350. As to the remaining portion of the July 16 statement, the district court properly excluded it as cumulative of the evidence already in the record.

App., *infra*, 6a.

---

[2] Petitioner and appellant Himen Ross joined in each other's argument on this issue pursuant to Fed. R. App. P. 28(i).

The court also found that any error would have been harmless. App., *infra*, 6a-7a, 12a-13a.

On the issue of the anonymous jury, the court wrote:

> Given the violent nature of the charged crimes, the affiliations with organized crime, the defendants' willingness to interfere with the judicial process both before and during the proceedings, and significant media attention, the district court acted well within its discretion to partially sequester and anonymize the jury. Further, the court minimized any potential prejudice by conducting a voir dire designed to uncover bias, and by giving the jurors a plausible and nonprejudicial reason for the protective measures.

App., *infra*, 14a.

REASONS FOR GRANTING THE PETITION

1. Petitioner's right to present a defense was violated when he was precluded from offering a declarant's out-of-court, self-inculpatory narrative tending to demonstrate third–party culpability where the circumstances clearly indicated the statement's trustworthiness; further, the statement offered by Petitioner was admissible under Fed. R. Evid. 804(b)(3) because it was, in context, a declaration against penal interest.

In *Williamson v. United States*, 512 U.S. 594, 599 (1994), the Court held that the hearsay exception for statements against penal interest under Fed. R. Evid. 804(b)(3) "cover[s] only those declarations or remarks within the confession that are individually self-inculpatory[ ]" In *Williamson*, the prosecution sought to introduce against a criminal defendant a declarant's confession that included statements implicating the defendant as an accomplice. This Court, though, did not decide Willamson's Confrontation Clause claim. Instead, the Court based its decision on interpretation of the evidentiary rule and held that "[n]othing in the text of Rule 804(b)(3) or the general theory of the hearsay Rules suggests that admissibility should turn on whether a statement is collateral to a self-inculpatory statement." *Williamson*, at 600.

While *Williamson* was intended to "clarify the scope of the hearsay exception for statements against

penal interest", it did not address the situation raised by Petitioner's case—*i.e.*, where the declarations against interest are offered by the accused in support of a defense of third-party culpability.

In *Lilly v. Virginia*, 527 U.S. 116, 129 (1999), the Court recognized, as a distinct "category of statements against penal interest", those statements "offered as exculpatory evidence by a defendant who claims that it was the maker of the statement, rather than he, who committed (or was involved in) the crime in question." *Lilly* goes on to recount how in *Chambers v. Mississippi*, 410 U.S. 299 (1973), the Court held "that the Due Process Clause affords criminal defendants the right to introduce into evidence third parties' declarations against penal interest—their confessions—when the circumstances surrounding the statements 'provide considerable assurance of their reliability.' " 410 U.S. at 300. *Lilly*, at 130; *see also Holmes,* at 324-325 (due process right to a meaningful opportunity to present a defense).

In Petitioner's case, the district court and the court of appeals relied on *Williamson* to narrowly interpret material parts of Sylvester's July 16 statement as not being self-inculpatory (and precluded the entire statement). These included Sylvester admitting that he had flouted his Mafia sponsor Basciano (who had directed Sylvester to surrender one of his gambling spots to the Albanians), and instead pushed back at this order by seeking redress from another Mob figure (Deluca) and, frustrated by Deluca's failure to help, decided to withhold protection payments. By admit-

ting to the FBI that he went to Mafia figures to help perpetuate his illegal business, and that he then withheld protection money, not because he viewed himself as a victim of extortion but because he felt the Mafia was not doing enough to help him commit further crimes (and intended to pocket more of his illegal proceeds for himself), Sylvester was clearly making self-inculpatory statements, and, indeed, establishing his ongoing participation in a criminal conspiracy.

The statement also had strong guarantees of trustworthiness, as Sylvester made the statement to FBI agents in the hope of identifying plausible suspects in the attacks on himself and his son Salvatore. The lower courts applied *Williamson* in a "mechanistic[ ]" fashion to deprive Petitioner of his due process right to present a defense. *Chambers*, at 302*;* U.S. Const., Amend. V. *See also Green v. Georgia*, 442 U.S. 95, 97 (1979) (per curiam) ("Regardless of whether the proffered testimony comes within . . . [Georgia's] hearsay rule, under the facts of this case its exclusion constituted a violation of the Due Process Clause. . . .").

Typical third-party declarations against interest are offered as admissions or confessions to the crime for which the defendant is on trial. In Petitioner's case, Sylvester's July 16 declaration to the FBI was offered to support an alternative-perpetrator defense, by proof that Sylvester was embroiled in an ongoing and burgeoning dispute with powerful organized crime interests that coincided with the ongoing and

escalating attacks on Sylvester and Salvatore. However, there is no principled reason for treating Sylvester's declaration in a different way than a third–party confession case, as the declaration was being offered pursuant to Petitioner's due process right to present a defense and as evidence of third–party culpability on the part of the organized criminals with whom Sylvester had dealings.

This case then presents two issues, each of which is an important question of federal law that has not been, but should be, settled by this Court, and/or conflicts with this Court's jurisprudence on the right to present a defense:

1. whether the limitations that *Williamson* imposes on so-called collateral statements should apply to bar an accused from introducing such a statement, particularly where the statement is made under circumstances that render it clearly trustworthy, Confrontation Clause concerns are not implicated, and the statement is intertwined with and part of a narrative describing the declarant's criminal activity; and

2. whether, in any event, the statement offered in Petitioner's case is admissible under Rule 804(b)(3) because it was, in context, a declaration against penal interest.

On this latter point, we note Justice Scalia's concurrence in *Williamson*, where he states: "A state-

ment obviously can be self-inculpatory (in the sense of having so much of a tendency to subject one to criminal liability that a reasonable person would not make it without believing it to be true) without consisting of the confession 'I committed X element of crime Y' " and that there can be statements that "in context are obviously against [a person's] penal interest", even though not a confession 'to any element of a crime.' " *Williamson*, at 606.

In Petitioner's case, these issues were wrongly decided by the lower courts. The statements concerning Sylvester pushing back against Mafia orders to abandon one of his gambling spots, his attempt to seek redress from organized crime so that he could continue to commit crimes without interference, and his decision to withhold money from the Mafia because they were not adequately protecting his illegal gambling spots, cannot be artificially read in isolation, but must be considered in context, and in context they are clearly self-inculpatory. The lower courts' reliance on the strictures of *Williamson* to preclude the statement was misplaced.

Sylvester's statement would have supported a viable alternative-perpetrator theory in a way that the admitted evidence could not, such that its preclusion was prejudicial and not harmless. It would have presented a more credible motive for the attacks on Sylvester and Salvatore, whereas the government's motive for Petitioner to murder his father was weak, nor did not government advance a coherent theory of motive for Petitioner to murder his brother. And, the

notion that these assaults were the product of an organized crime dispute is consistent with the way they unfolded. The attacks began shortly after the dispute arose with the Albanian mob. The initial attack on Sylvester on September 8, 2017 was not an attempted murder but an assault with fists, which is more characteristic of Mafia intimidation than an outright murder scheme. And, the July 2018 additional attack on Salvatore is consistent with someone targeting the gambling enterprise, for Sylvester and Salvatore were the only two family members involved in that enterprise. Moreover, the Bonnano family has a well-documented history of running illegal gambling operations as part of its racketeering activity, and resorting to extreme measures (including murder) to enforce its money-making operations and to exact retribution on wayward associates. *See United States v. Basciano*, 599 F.3d 184, 190 (2d Cir. 2010) (Basciano ordering murder of Bonnano confederate); *Amato v. United States*, Nos. 11-cv-5355 (NGG), 03-cr-1382 (NGG), 2017 U.S. Dist. LEXIS 53144, 2017 WL 1293801 (E.D.N.Y. April 5, 2017) (murder of Bonnano associate suspected of stealing proceeds); *Basciano v. Martinez*, No. 07-CV-421 (NGG), 2007 U.S. Dist. LEXIS 56913, *12, 20-23, 2007 WL 2119908 (E.D.N.Y May 25, 2007) (Basciano soliciting murders from prison).

The record also contains references to Bushawn Shelton talking of being hired for one attack by "[m]y mafia [person]", telling a co-conspirator that the murder for hire scheme was related to the victim's construction business and that Shelton had been in-

volved with committing, or hiring others, to commit mob-related murders, and a third co-conspirators statement that the conspiracy involved "some mobster [person]." Zottola Br. at 11-12. Petitioner had nothing to do with the Mafia, but the dispute over Sylvester's gambling operation did.

The Constitution guarantees criminal defendants "'a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986), quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984). "This right is abridged by evidence rules that 'infring[e] upon a weighty interest of the accused' and are 'arbitrary' or 'disproportionate to the purposes they are designed to serve.'" *United States v. Scheffer*, 523 U.S. 303, 308 (1998) (quoting *Rock v. Arkansas*, 483 U.S. 44, 58, 56 (1987). *Holmes*, at 324-325. The evidentiary ruling challenged here deprived Petitioner of that meaningful opportunity and should be reviewed by this Court.

2. The Court should decide a) whether empaneling an anonymous jury violates the presumption of innocence, the right to a fair and public trial, and the right to an impartial jury, in the absence of grounds for finding that alleged obstructive conduct of the defendant related to tampering with or threatening witnesses, jurors, or other trial participants; and b) whether, in determining whether to empanel an anonymous jury in a criminal case, the court must consider alternatives to full anonymity and state its reasons for denying such relief.

The use of anonymous juries is a relatively recent addition to Anglo-American jurisprudence. The case widely viewed as having inaugurated this practice is *United States v. Barnes*, 604 F.2d 121 (2d Cir. 1979). Since then, the practice has spread to every federal circuit. Leonardo Mangat, *A Jury of Your [Redacted]: The Rise and Implications of Anonymous Juries*, 103 Cornell L Rev 1621, 1630 (2018). The Second Circuit holds that empaneling an anonymous jury requires "first, strong reason to believe that the jury needs protection and, second, reasonable precaution must be taken to minimize the effect that such a decision might have on the jurors' opinion of the defendants." *United States v. Thomas*, 757 F.2d 1359, 1365 (2d Cir. 1985). *See also United States v. Wong*, 40 F.3d 1347, 1376 (2d Cir. 1994).

Circuit courts have characterized the anonymous jury as a measure that is "drastic", *United States v.*

Ochoa-Vasquez, 428 F.3d 1015, 1034 (11th Cir. 2005), and "extreme", *United States v. Mansoori*, 304 F.3d 635, 650 (7th Cir. 2002). Yet, at the same time, they have identified a variety of factors that trial courts can consider, while generally reviewing such cases under a deferential abuse-of-discretion standard. The factors include: "(1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration and substantial monetary penalties, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment." *United States v. Ross,* 33 F.3d 1507, 1520 (11th Cir. 1994). *See Ochoa-Vasquez*, 428 F.3d at 1035 (a district court does not abuse its discretion when a "combination of these factors supports [the] conclusion that the jury need[s] special protection.").

The Circuit courts recognize that juror anonymity implicates constitutional rights including by "rais[ing] the specter that the defendant is a dangerous person from whom the jurors must be protected, thereby implicating the defendant's constitutional right to a presumption of innocence", *Ross*, 33 F.3d at 1519, and the defendant's interest in conducting a "meaningful *voir dire*". *United States v. Amuso*, 21 F.3d 1251, 1264 (2d Cir. 1994). U.S. Const., Amends. V and VI; *see Morgan v. Illinois*, 504 U.S. 719 (1992) ("part of the guarantee of a defendant's right to an

impartial jury is an adequate voir dire to identify unqualified jurors").

While this Court has yet to review this now-widespread practice, it has recognized that the right to a public trial, as guaranteed by both the First and Sixth Amendments, includes the jury selection process. *Presley v. Georgia*, 558 U.S. 209 (2010). While *Presley* did not address the question of juror anonymity, it held that, even where there exist grounds for curtailing public access to jury selection, "trial courts are required to consider alternatives to closure." *Presley*, at 215. Indeed, "trial courts are required to consider alternatives to closure even when they are not offered by the parties", *Presley,* at 214, and the "particular interest" being protected by closure "must 'be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.' " *Presley*, at 216, quoting *Press-Enterprise Co. v. Superior Court of Cal. Riverside Cty.,* 464 U.S. 501, 510 (1984). By contrast, the anonymous-jury jurisprudence, as developed by the Circuits, does not require trial courts to consider lesser alternatives, although it does recognize that district court's may take such measures. *See United States v. Napout*, 963 F.3d 163, 188-190 (2d Cir. 2020). One lesser alternative is withholding juror information from the public, while disclosing it to counsel and the parties. *Id.* at 189. A more restrictive alternative would allow disclosure to counsel only, but not to the defendants. But, the absence of a *requirement* that lesser alternatives be considered

leaves trial courts with little incentive to employ any alternatives, or to conduct a thorough analysis and evaluation of the competing interests when they do consider them.

By way of an attempt to "minimize" prejudice to the defendants, the Circuits endorse giving jurors a "plausible" and nonprejudicial reason for hiding their identities. *Napout*, at 189. In Petitioner's case the trial court told the jurors that their identities were being protected solely due to the potential for media coverage. But, this sort of "minimizing" borders on a ruse and many jurors can well see through it.

Moreover, the Circuit law does not provide a clear standard on when allegations of obstruction of justice against a defendant warrant juror anonymity. Some circuit opinions, in affirming trial courts, note that the obstructive conduct (by the defendant or other conspirators), related specifically to witness intimidation. *Napout*, at 189-190; *United States v. Aulicino*, 44 F.3d 1102, 1117 (2d Cir. 1995). But, this notion has hardly risen to the level of a standard.

This case then presents the following important questions of federal law that have not been, but should be, settled by this Court:

1. Does empaneling an anonymous jury violate the presumption of innocence, the right to a fair and public trial, and the right to an impartial jury, in the absence of grounds for finding that alleged obstructive conduct of the defendant related to

tampering with or threatening witnesses, jurors, or other trial participants; and

2. In determining whether to empanel an anonymous jury in a criminal case, must the court consider alternatives to full anonymity and state its reasons for denying such relief.

In Petitioner's case, the district court wrongly decided that empanelment of a an anonymous jury was warranted and the court of appeals wrongly decided that this was not an abuse of discretion. The allegations of obstructive conduct here were remarkably weak and bore no nexus to juror security. The government alleged Petitioner's "attempts to monitor the investigation by accompanying his father to meetings with law enforcement" and a letter Anthony wrote to Salvatore, after his arrest, stating that "no matter what [they] were there for each other." J.A. 143-145. These fall well short of attempting to interfere with the trial process or intimidate any witness. Anthony did not attend his father's proffer sessions and merely facilitating his father's appointment with the FBI was not an attempt to influence those meetings. Nor can the letter to his brother be fairly read as an attempt to influence the investigation. In the case of Shelton (who, at the time, was awaiting trial but ended up pleading guilty), the government cited his wife's request for the return of one of several seized cell phones, Shelton's possession of a " contraband cell phone" which he allegedly used to contact Anthony prior to his arrest, and Shelton understating the

amount of cash that he had on hand in a financial affidavit. Even taken together, none of these claims evidence intimidation, bribing, or violence towards witnesses or jurors. Indeed, far more concrete allegations—such as veiled threats to family members or cooperators—have been found insufficient to warrant an anonymous jury. *United States v. Millan-Colon*, 834 F. Supp. 78 (S.D.N.Y. 1993).[3] The current state of Circuit law, with its reliance on general and amorphous factors, permits trial courts to rely on insufficient allegations to order anonymous juries.

Other factors that the Circuits recognize are equally problematic, and were insufficient to warrant anonymity here. The factors of "involvement in organized crime" and "participation in a group with the capacity to harm jurors" reverse the presumption of innocence, invite rank speculation, and potentially cover a wide range of activity, ranging from La Cosa Nostra families to low-level street gangs to conspiratorial conduct that involves no gang or "family" at all but is enough to qualify as a RICO enterprise. And consideration of a defendant's exposure to "lengthy incarceration" covers a great number of cases that are routinely tried before district courts.

---

[3] The court of appeals' reference to interference with the judicial process "during the proceedings", App., *infra*, 14a, apparently refers to an incident during the trial when Petitioner's co-defendant Ross was accused of calling a witness a "rat" during a break in testimony, but this occurred well after the ruling granting anonymity and was not the basis for it, nor does such an emotional outburst evidence some capacity to harm the witness, much less a juror.

At trial, Petitioner argued in the alternative that the court apply a lesser remedy by withholding juror names and information from the public, but not the parties. The court denied this request without setting forth its reasons, adding that, while it had "considered it", the court had "never done it", and that it had conferred with judicial colleagues about this. App, *infra*, 19a. Yet, there existed here easily workable alternatives, including limiting disclosure to the parties or, more restrictively, limiting disclosure to counsel only. The trial court's summary denial of relief here reflects that, without a *Presley*-type rule mandating that courts consider alternatives to full anonymity, those requests will be routinely denied as a matter of institutional practice. The trial court abused its discretion in failing to implement less restrictive alternatives, or to set forth its reasons for not doing so.

The trial court's ruling impaired Petitioner's ability to conduct an effective voir dire, including the type of routine investigation and follow up questioning that can be aided by such information.

The court also subjected the jurors—over some seven weeks of trial—to security measures that required them to be escorted in an and out of the courthouse and to be held together during the lunch hour. All of the restrictive measures—despite the court's efforts to couch them as being due solely to media attention—had a negative impact on Petitioner by wrongly conveying that they he posed a safety threat to the jurors, and thus impairing the presumption of innocence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: February 5, 2026

Respectfully submitted,

Theodore S. Green
GREEN & WILLSTATTER
Attorneys for Petitioner
200 Mamaroneck Avenue, Suite 605
White Plains, New York 10601
914-948-5656
theosgreen@msn.com

APPENDIX

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 10th day of November, two thousand twenty-five.

PRESENT:

AMALYA L. KEARSE,
DENNIS JACOBS,
MARIA ARAÚJO KAHN,
Circuit Judges.

Nos. 23-6378(Con), 23-6401(Con)

UNITED STATES OF AMERICA,

Appellee,

v.

ANTHONY ZOTTOLA, SR., HIMEN ROSS, AKA ACE, AKA A BOGGIE,

Defendants-Appellants,*

BUSHAWN SHELTON, AKA SHELZ, ARTHUR CODNER, AKA FEDDI, AKA FEDDIE, AKA FETTY, AKA FEDDI BOSSGOD, AKA FETTY BOSS, AKA SCARY, KALIK MCFARLANE, AKA DOTTKOM, AKA DOT, ALFRED LOPEZ, AKA ALOE, BRANDEN PETERSON, AKA B, AKA MUR B, JULIAN SNIPE, AKA BIZ, AKA BIZZIE B, AKA BIZZZY, JASON CUMMINGS, AKA THE HAT, AKA STACK,

Defendants.

For Defendant-Appellant Zottola:

THEODORE S. GREEN, Green & Willstatter, White Plains, NY.

For Defendant-Appellant Ross:

LAWRENCE D. GERZOG, The Fast Law Firm, New York, NY.

---

* The Clerk of Court is respectfully directed to amend the case caption as indicated above.

For Appellee:

EMILY J. DEAN, Assistant United States Attorney (Amy Busa, Kayla C. Bensing, Devon E. Lash, Andrew M. Roddin, Assistant United States Attorneys, *on the brief*), *for* John J. Durham, United States Attorney for the Eastern District of New York, NY.

Appeals from judgments of the United States District Court for the Eastern District of New York (Hector Gonzalez, *J.*).

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

Defendants-Appellants Anthony Zottola, Sr. ("Zottola") and Himen Ross ("Ross") were convicted upon a jury verdict of murder-for-hire conspiracy and murder-for-hire, in violation of 18 U.S.C. § 1958(a), unlawful use and possession of firearms, in violation of 18 U.S.C. § 924(c)(1)(A)(iii), and causing death through use of a firearm, in violation of 18 U.S.C. § 924(j)(1). Each was sentenced principally to concurrent terms of life imprisonment. Zottola and Ross now challenge their judgments of conviction in this consolidated appeal.[1]

---

[1] Defendant Herman Blanco pleaded guilty pursuant to a plea agreement and subsequently sought to appeal his conviction and sentence. Blanco's appellate counsel has moved for permission to withdraw pursuant to *Anders v. California*, 386

BACKGROUND

The evidence at trial detailed that, over the course of a year, Zottola hired hitmen, including Ross, to murder his father, Sylvester Zottola ("Sylvester"), and older brother, Salvatore Zottola ("Salvatore"), in order to take control of the family's real estate business. Beginning in 2017, Zottola, Ross, and their co-conspirators commenced a series of attacks on Sylvester and Salvatore, culminating in the July 11, 2018 near-fatal shooting of Salvatore and the October 4, 2018 murder of Sylvester. The evidence demonstrated that Ross, who shot both victims, was paid by Zottola through a fellow co-conspirator, Bushawn Shelton ("Shelton").

On appeal, Zottola challenges certain evidentiary rulings, the use of an anonymous and partially sequestered jury, and the court's jury instructions regarding the testimony of cooperating witnesses. Ross joins Zottola's arguments and further challenges the admission of certain references to gang affiliation. We assume the parties' familiarity with the remaining facts, the procedural history, and the issues on appeal, to which we refer only as necessary to explain our decision.

U.S. 738 (1967), and the government has moved to dismiss Blanco's appeal as barred by the appellate waiver contained in the plea agreement. By separate order issued today, we have resolved these motions. *See United States v. Blanco*, No. 22-3211 (2d Cir. Nov. 10, 2025).

DISCUSSION

I. EVIDENTIARY CHALLENGES

"We review a trial court's evidentiary rulings for an abuse of discretion and recognize that district courts enjoy broad discretion over the admission of evidence." *United States v. McDermott*, 245 F.3d 133, 140 (2d Cir. 2001) (citation omitted). A district court abuses its discretion if "its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or if its decision cannot be located within the range of permissible decisions." *United States v. Cuti*, 720 F.3d 453, 457 (2d Cir. 2013).

A. Sylvester's Proffer Statements

Zottola first argues that the district court abused its discretion by excluding a proffer statement Sylvester made to the FBI, which Zottola sought to admit as a statement against penal interest pursuant to Federal Rule of Evidence 804(b)(3). Sylvester made proffer statements to the FBI on July 12 and July 16, 2018, shortly after the failed attempt on Salvatore's life. The court admitted Sylvester's July 12 statement, but excluded the July 16 statement as cumulative and outside the hearsay exception for statements against penal interest. In both statements, Sylvester acknowledged that he operated an illicit gambling business and described a conflict with Albanian organized crime figures. The excluded July 16 statement, however, contained the additional information that

Sylvester had stopped making protection payments to his mafia protector, Richard DeLuca, due to DeLuca's inability to protect his interests.

"Federal Rule of Evidence 804(b)(3) permits the admission of a statement against an unavailable declarant's penal interest if the statement, when made, had so great a tendency to expose the declarant to criminal liability that a reasonable person in his position would have made the statement only if he believed it to be true, and corroborating evidence clearly indicates the trustworthiness of the statement." *United States v. Dupree*, 870 F.3d 62, 80 (2d Cir. 2017).

The district court acted within its discretion in excluding Sylvester's July 16 proffer statement as it was not self-inculpatory. Rule 804(b)(3) "does not allow admission of nonself-inculpatory statements, even if they are made within a broader narrative that is generally self-inculpatory." *Williamson v. United States*, 512 U.S. 594, 600–01 (1994). Here, the precluded statement refers to Sylvester's ceasing protection payments to the mafia. As the district court correctly noted, "if you're paying protection money, you're a victim and not a perpetrator of a crime." Joint App'x at 350. As to the remaining portion of the July 16 statement, the district court properly excluded it as cumulative of the evidence already in the record.

Even assuming, *arguendo*, that the court improperly excluded the July 16 statement, any error was harmless. Because the district court admitted the July 12 statement, the defense was free to present its alternative perpetrator theory, including by

presenting evidence that Sylvester had a conflict with the Albanian mafia and that his mafia connections had refused to help. The only new information contained in the July 16 statement was that Sylvester had stopped paying DeLuca protection money. This additional statement, however, was not probative of motive because Salvatore and Sylvester were attacked multiple times prior to when protection payments stopped, undermining Zottola's theory that the July and October shootings were retribution by the mafia. Accordingly, any possible error in excluding the July 16 statement was harmless.

B. Testimony of Defense Witness-1

The trial court also acted well within its discretion to exclude Defense Witness-1's ("DW-1") unreliable and uncorroborated testimony, which Zottola likewise sought to admit pursuant to Rule 804(b)(3). DW-1 was purportedly incarcerated with Zottola's co-defendant, Jason Cummings. Cummings allegedly told DW-1 that another co-defendant, Shelton, reported to Cummings that Sylvester's murder was motivated by a mafia plot to take control of Sylvester's construction companies. Cummings also purportedly said that Salvatore was shot with a ".38 caliber pistol because this weapon does not leave shell casings." Joint App'x at 176-A.

"To evaluate whether a statement is sufficiently trustworthy [under Rule 804(b)(3)], we look to evidence that corroborates both the declarant's trustworthiness and the truth of the statement." *United States v. Lumpkin*, 192 F.3d 280, 287 (2d Cir.

1999). Here, DW-1's statements materially contradicted the trial evidence. For example, the NYPD recovered shell casings from the scene of Salvatore's shooting, and video surveillance confirmed that the assailant used a semi-automatic firearm, which leaves shell casings. Moreover, the identity of the declarant who supposedly told Shelton that Sylvester's murder was ordered by the mafia—the key testimony for Zottola's defense—was unknown, and thus impossible to corroborate. Accordingly, we affirm the trial court's exclusion of this unreliable and uncorroborated hearsay.

C. Salvatore's Prior Consistent Statements

The trial court did not abuse its discretion in admitting portions of several recorded calls between Salvatore and an incarcerated mafia figure, Vincent Basciano, pursuant to Federal Rule of Evidence 801(d)(1)(B). Rule 801(d)(1)(B) permits the admission of a declarant-witness's prior consistent statement if the statement is offered "(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground." Fed. R. Evid. 801(d)(1)(B); *see United States v. Flores*, 945 F.3d 687, 705–06 (2d Cir. 2019) (explaining that Rule 801(d)(1)(B)(ii) allows for the substantive use of prior consistent statements to rebut "defendants' attacks on [the declarant]'s credibility and memory").

During Salvatore's cross examination, defense counsel accused Salvatore of lying to law enforcement and suggested that he knew or suspected that the mafia was involved in the attacks against his family. The admitted portions of the calls between Salvatore and Basciano describe Salvatore's frequent visits to the police to assist with their investigation and demonstrate that Basciano and Salvatore did not know who was behind the attacks. These statements were thus "consistent with [Salvatore's] testimony" and were offered "to rehabilitate [Salvatore's] credibility as a witness when attacked on another ground." Fed. R. Evid. 801(d)(1)(B).

D. Third-Party Text Messages

The district court properly excluded certain text messages between Zottola's co-conspirator, Shelton, and unrelated third parties pertaining to an alleged conspiracy to sell marijuana. Zottola sought to admit the Shelton-third-party texts under the rule of completeness, arguing that the texts provided necessary context to previously admitted contemporaneous texts between Zottola and Shelton. However, Rule 106 does not "require the admission of portions of a statement that are neither explanatory of nor relevant to the admitted passages." *United States v. Kopp*, 562 F.3d 141, 144 (2d Cir. 2009) (internal quotation marks omitted). Here, the proffered texts do not explain or relate to the communications between Shelton and Zottola. Rather, they are texts to different people, on different topics, and do not use the same coded language

as the Shelton-Zottola texts. As the proffered texts bear no relevance to the communications between Shelton and Zottola, the district court properly exercised its discretion in excluding them.

E. Zottola's Post-Arrest Statements to Law Enforcement

Pursuant to Rule 403, the district court did not abuse its discretion by admitting Zottola's spontaneous post-arrest statements to law enforcement. After his arrest, while sitting in an FBI office for booking and processing, Zottola said to an agent, "I'm sorry about my kids . . . one thing I can say is, I had a feeling you were coming. When I don't know, but I can thank you that it was after Father's Day and it was after all my kids' birthdays. Whatever it is." Zottola claims that these statements were not made from a guilty conscience, but referred to his expectation that he was the target of a grand jury investigation. We are unpersuaded and find that these statements were probative of Zottola's consciousness of guilt and were not substantially outweighed by the risk of unfair prejudice because Zottola remained free to argue that the jury should draw other, non-incriminating inferences from the statements. *Cf. McDermott*, 245 F.3d at 140 ("[W]hen reviewing a Rule 403 ruling, we must review the evidence maximizing its probative value and minimizing its prejudicial effect." (internal quotation marks omitted)). Therefore, we find no abuse of discretion in admitting these statements.

F. Evidence of Co-Conspirators' Gang Membership

The district court did not err by admitting testimony that Ross and other co-conspirators were members of the same gang. Evidence of a defendant's gang affiliations may be admissible "to provide background for the events alleged in the indictment, or to enable the jury to understand the complete story of the crimes charged, or how the illegal relationship between coconspirators developed." *United States v. Reifler*, 446 F.3d 65, 91–92 (2d Cir. 2006) (internal quotation marks and citations omitted). Here, the gang-affiliation testimony helped establish how the co-conspirators knew each other, how they grew to trust each other, and clarified how and why they communicated in specific ways. The gang-affiliation evidence was thus properly admitted under Rule 401 as direct evidence of the charged conspiracy. Moreover, the testimony was properly admitted under Rule 403 because the court took care to mitigate the risk of unfair prejudice by precluding any reference to the "Bloods," the specific gang at issue. Accordingly, we find that the court did not abuse its discretion in admitting the gang-affiliation testimony.[2]

---

[2] To the extent challenged here, we affirm the district court's denial of Ross's motion for mistrial and severance based on the gang-related testimony. Ross has failed to demonstrate unfair prejudice, let alone "prejudice so severe that his conviction constituted a miscarriage of justice." *United States v. Diaz*, 176 F.3d 52, 102 (2d Cir. 1999) (internal quotation marks omitted). Absent such a showing,

G. Harmless Error

Although we find that the district court acted within its evidentiary discretion in rendering the above rulings, we likewise affirm because any potential error was harmless. *See United States v. Dhinsa*, 243 F.3d 635, 649 (2d Cir. 2001) ("[I]n order for an error to be deemed harmless, the reviewing court must conclude beyond a reasonable doubt that a rational jury would have rendered a verdict of guilty absent the alleged error."). "The strength of the government's case against the defendant is probably the most critical factor in determining whether an error affected the verdict." *United States v. Colombo*, 909 F.2d 711, 714 (2d Cir. 1990).

Here, the government presented ample evidence demonstrating that Ross and Zottola committed the charged crimes. The government introduced thousands of text messages between the co-conspirators, including between Zottola, Shelton, and Ross. These messages detailed every step of the murder-for-hire conspiracy, including the planning of the various attacks, promises of payment, confirmations of the shootings of Salvatore and Sylvester, and celebratory messages immediately after Sylvester's murder. This evidence was corroborated by cell-site data demonstrating Zottola's repeated meetings with his co-conspirators, evidence of payments from Zottola to his co-conspira-

---

"we are not apt to reverse, since, by and large, joinder promotes judicial efficiency." *Id.* at 103 (internal quotation marks omitted).

tors, cooperating witness testimony, video surveillance, and DNA evidence. In light of this overwhelming evidence, we conclude that any issues with the challenged evidentiary rulings were "unimportant in relation to everything else the jury considered on the issue[s] in question, as revealed in the record." *United States v. Atilla*, 966 F.3d 118, 131 (2d Cir. 2020) (internal quotation marks omitted).

II. THE JURY CHALLENGES

A. Anonymous and Partially Sequestered Jury

Zottola and Ross next challenge the district court's empanelment of a partially sequestered anonymous jury, arguing that these protective measures impaired their presumption of innocence and deprived them of a fair trial. We find no abuse of discretion.

"A district court may order the empaneling of an anonymous jury upon (a) concluding that there is strong reason to believe the jury needs protection, and (b) taking reasonable precautions to minimize any prejudicial effects on the defendant and to ensure that his fundamental rights are protected." *United States v. Kadir*, 718 F.3d 115, 120 (2d Cir. 2013) (internal quotation marks omitted). "If there is evidence to support the district court's finding of reason to believe the jury needs protection, and if the court has taken reasonable precautions to minimize any prejudicial effects on the defendant . . . , the decision to empanel an anonymous jury is

reviewed only for abuse of discretion." *United States v. Thai*, 29 F.3d 785, 801 (2d Cir. 1994). Likewise, the "decision to sequester the jury to avoid exposure to publicity is committed to the discretion of the court." *United States v. Salerno*, 868 F.2d 524, 540 (2d Cir. 1989).

Given the violent nature of the charged crimes, the affiliations with organized crime, the defendants' willingness to interfere with the judicial process both before and during the proceedings, and significant media attention, the district court acted well within its discretion to partially sequester and anonymize the jury. Further, the court minimized any potential prejudice by conducting a *voir dire* designed to uncover bias, and by giving the jurors a plausible and nonprejudicial reason for the protective measures. We accordingly affirm the district court's empanelment of an anonymous and partially sequestered jury.

B. Jury Instruction on Evaluating Cooperator Testimony

Finally, we find no error in the district court's jury instruction regarding cooperator testimony. "We review preserved challenges to jury instructions *de novo*, but will reverse only if all of the instructions, taken as a whole, caused a defendant prejudice." *United States v. Jimenez*, 96 F.4th 317, 322 (2d Cir. 2024) (internal quotation marks omitted). "A defendant challenging a jury instruction as erroneous must show both error and ensuing prejudice . . . ." *United States v. Sabhnani*, 599 F.3d 215,

237 (2d Cir. 2010) (internal quotation marks omitted).

Here, the court's charge properly instructed the jury on evaluating cooperator testimony. The court informed the jury of a cooperator's motive to lie and instructed the jury to "scrutinize such testimony with caution and weigh it with great care." Joint App'x at 441; *see United States v. Vaughn*, 430 F.3d 518, 524 (2d Cir. 2005) ("As long as district courts intelligibly identify a cooperating witness's possible motivations for the jury's consideration, the cautionary charge given to the jury regarding a cooperating witness's testimony is sufficient."). The court also properly instructed the jury regarding U.S.S.G. § 5K1.1, informing the jury that the government cannot be compelled to make a 5K1 motion "unless it acts in bad faith in refusing to make such a motion," and noting that the "court has complete discretion . . . to impose any sentence that it deems appropriate and reasonable." Joint App'x 441-42. This instruction accurately describes the law and did not mislead the jury as to the correct legal standard. *See United States v. Doe*, 741 F.3d 359, 362 (2d Cir. 2013) (providing that the government must act "fairly and in good faith" in refusing to make a § 5K1.1 motion (internal quotation marks omitted)); *United States v. Fernandez*, 127 F.3d 277, 286 (2d Cir. 1997) ("[E]ven where the government moves for a departure pursuant to § 5K1.1, the sentencing judge retains discretion to decide whether or not to grant such a departure."). Accordingly, we find no error in the jury instruction given.

We have considered the parties' remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgments of the district court.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

18-CR-00609 (RJD)

United States Courthouse
Brooklyn, New York

Tuesday, July 12, 2022
12:00 p.m.

UNITED STATES OF AMERICA,

–against–

SHELTON, et al.,

Defendants.

TRANSCRIPT OF CRIMINAL CAUSE
FOR STATUS CONFERENCE BEFORE
THE HONORABLE RAYMOND J. DEARIE
UNITED STATES SENIOR DISTRICT JUDGE

---

* * * *

[Page 6]

I am going to partially sequester an anonymous jury. Given the nature of the charges and the projected length of the trial, I think that's not only a prudent choice, but one that is, ultimately, in everyone's interest. Obviously, with the question-

naires you are going to receive a lot more information than you ordinarily would. And if it's handled routinely, as I have done in the past, matter of factually, there is minimal, if any, risk of prejudice. So, an anonymous jury partially sequestered, depending upon the circumstances as they evolve.

* * * *

[Page 22]

THE COURT: Anybody else? Okay.

MR. MAZUREK: I'm sorry, not to hog the time here, but there is one other question I have about the anonymous jury, Your Honor.

THE COURT: Yes, sir.

MR. MAZUREK: I don't know what your past practice has been, but certainly as indicated in some of our papers, there is a modified approach to an anonymous jury potentially where the—at least, the identity of the jurors are made available to the parties, but not to the public. We would ask for that modification here.

You know, I respect the Court's decision that you believe that one is needed here, despite that there's no evidence or allegation of witness tampering or obstruction of

* * * *

[Page 23]

justice-type activities.

THE COURT: Yes, there really is, let's be honest. Go ahead.

MR. MAZUREK: But I would ask that we, at least, because a thorough voir dire is very important given the nature of the allegations here, the press that has been received in the case and expected to continue to be received, it's important for us to know the people about whom we are judging to determine if they are, indeed, qualified to sit as jurors in this—this life case for our clients.

THE COURT: Right.

MR. MAZUREK: So, we do make that, at least that modification, that slight modification.

THE COURT: Understood. I've considered it. I've never done it. I've considered it. I've talked to a couple of colleagues about it. I'm not going to do it. We are going to have an anonymous jury.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

18-CR-609 (RJD)

United States Courthouse
Brooklyn, New York

August 16, 2022
9:30 a.m.

UNITED STATES OF AMERICA,

–against–

BUSHAWN SHELTON, HIMEN ROSS,
ALFRED LOPEZ, ANTHONY ZOTTOLA,

Defendants.

**TRANSCRIPT OF CRIMINAL CAUSE
FOR JURY SELECTION BEFORE
THE HONORABLE HECTOR GONZALEZ
UNITED STATES DISTRICT COURT JUDGE**

---

* * * *

[Page 20]

Now for a few specific instructions. When you fill out your questionnaire, please take your time. The more compete your responses are, the more of your time and everyone else's time you will save.

Routinely, in cases like this one that attract public or media attention, for your privacy we assign you a number and put your names to the side. Your answers on the first and second pages of the questionnaire, which you will see, ask for your name, your phone number and your address. Those will be seen only by a limited number of court personnel so that the folks in the jury room know how to get ahold of you if they need to reach you. So on the rest of the questionnaire make sure you record your juror number on each of the pages because that will be the only way that I or the parties will be able to identify you based on that number.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

18-CR-00609 (HG)

United States Courthouse
Brooklyn, New York

Monday, October 3, 2022
9:30 a.m.

UNITED STATES OF AMERICA,

–against–

HIMEN ROSS, ALFRED LOPEZ,
and ANTHONY ZOTTOLA, SR.,

Defendants.

TRANSCRIPT OF CRIMINAL CAUSE
FOR JURY TRIAL BEFORE THE
HONORABLE HECTOR GONZALEZ
UNITED STATES DISTRICT JUDGE

---

* * * *

[Page 5760]

I'm not going to allow any of the statements from the July 16th 302.

One, I'm not going to reach the Government's issue on whether if you make a statement pursuant to a proffer agreement, whether that's a declaration against penal interest, I'm not basing my decision on that.

There are three parts that the defense wants to introduce. The first is the one that begins with reference to the September 2017 incident, Zottola reached out to Basciano's wife, that's just repetitive and cumulative of what's already in the portion that I've already admitted, so I'm not going to let it in for that reason.

Then the next two statements: The one about DeLuca and the second one about paying the money to Basciano's wife, I'm not going to allow either of those statements in because I don't see those as declarations or statements against interest. If anything, if you're paying protection money, you're a victim and not a perpetrator of a crime at that point. I don't see how that's a declaration against interest.

MS. HARAMATI: Well, if I could just specifically **[Page 5761]** with respect to—I just want to briefly clarify with respect to the sentence, Zottola then reached out to DeLuca to settle down the situation with the Albanians, DeLuca, who Zottola pays protection money to was unable to assist since the Albanians took control of the establishment rather than anyone associated with LCN.

And the reason that I think I would like to just expand the record on this specific aspect of the statement is because I think that, first of all, it par-

allels the statement about reaching out to Vincent Basciano in terms of trying to seek help from organized crime connections to protect that establishment, but in terms of like the legal question under 804(B)(3), I think if we are talking about a person who is a known associate of organized crime who has routinely, as the testimony in this trial has already established that routinely pays protection money for profitable gambling establishments to members of organized crime over the course of decades that makes the person more in the nature of a co-conspirator than a victim because Sylvester Zottola himself was paying protection money in order to get the mob's protection so he himself could make a profit off illegal gambling machines.

THE COURT: That's one way to view the rackets and extortion.

MS. HARAMATI: Well, it's illegal gambling, Your Honor.

[Page 5762]

THE COURT: But I'm allowing statements to come in about the victim's engagement in illegal conduct.

So, 804(B)(3), if you're going to—the declaration against penal interest is focused on just the declaration against penal interest. It's not other things. So whether another LCN family or crew controlled the location is not a statement against interest by Zottola. So you can make your record, but I've told you where I'm coming down on the 716.

MS. HARAMATI: And I understand, Your Honor.

I just will say that there have been dozens, at a minimum, of people who have been indicted for precisely this kind of conduct with respect to illegal gambling machines which was the subject of the testimony in Vinny Basciano's this trial in this district 15 years ago. So the idea that Sylvester Zottola by admitting his participation in an illegal gambling conspiracy whereby he kicked up money, protection money in the mafia and also made his own fortune in this process, the idea that that is a statement of a victim rather than a statement against his own penal interest as a member and an associate of organized crime is I think not consistent with what is in the larger record in this case and also in the history of mafia prosecutions.

So, specifically, Sylvester Zottola's statements that he wanted to protect his illegal gambling location by reaching out to Richie DeLuca, who was a member of organized **[Page 5763]** crime, in order to settle the situation with the Albanians is I think directly a statement against his penal interest because it's an admission of his participation in an organized crime conspiracy, in a RICO conspiracy.

THE COURT: I don't see it that way, but certainly someone else may. I don't see it that way. I don't view that second statement about DeLuca as an independent statement against his own interest. We could be talking about DeLuca and if DeLuca was saying it, it would certainly be against DeLuca's interest, but I don't see it as a statement against Mr. Zottola's penal interest.

U.S. Const., Amend. V

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

U.S. Const., Amend. VI

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

Federal Rules of Evidence

Rule 804. Exceptions to the Rule Against Hearsay When the Declarant is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

* * *

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness;

* * *

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

* * *

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly

indicate its trustworthiness after considering the totality of circumstances under which it was made and any evidence that supports or undermines it.