NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10138
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TAMARA QUICUTIS,
KAREL FELIPE,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cr-20303-DPG-5

Before JORDAN, KIDD, and WILSON, Circuit Judges.

PER CURIAM:

Defendants-Appellants Tamara Quicutis and Karel Felipe appeal their respective convictions and sentences of 70 months imprisonment and 100 months imprisonment for conspiracy to commit healthcare fraud and wire fraud in violation of 18 U.S.C. §§ 1343, 1347, 1349, and conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(i), (h). They each raise challenges to the sufficiency of the evidence supporting their convictions and to purported errors during sentencing. After careful review, we affirm in part, vacate and remand in part, and remand with additional instructions to fix a clerical error.

I.

First, Quicutis challenges the sufficiency of the evidence supporting her conviction for conspiracy to commit money laundering. We review challenges to the sufficiency of the evidence supporting a conviction de novo. *United States v. Nerey*, 877 F.3d 956, 967 (11th Cir. 2017). The relevant question is whether "*any* rational 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). In conducting this review, "we view the evidence in the light most favorable to the government and all reasonable inferences and credibility choices are made in the government's favor." *United States v. Mercer*, 541 F.3d 1070, 1074 (11th Cir. 2008) (per curiam). "A jury is free to choose among reasonable constructions of the evidence." *United States v. Cruz-Valdez*, 773 F.2d 1541, 1545 (11th Cir. 1985) (en banc).

"The test for sufficiency of evidence is identical regardless of whether the evidence is direct or circumstantial, and no distinction is to be made between the weight given to either direct or circumstantial evidence." *United States v. Mieres-Borges*, 919 F.2d 652, 656–57 (11th Cir. 1990) (internal quotation marks omitted).

"Concealment money laundering is any transaction designed to conceal or disguise the true nature or location of illegally obtained funds." *United States v. Iriele*, 977 F.3d 1155, 1173–74 (11th Cir. 2020); 18 U.S.C. § 1956(a)(1)(B)(i). To establish a conspiracy to commit money laundering under 18 U.S.C. § 1956(h), the government must prove an agreement between two or more persons to commit a money-laundering offense and that the defendant knowingly and voluntarily participated in that agreement. *United States v. Feldman*, 936 F.3d 1288, 1307 (11th Cir. 2019). The government may prove this through "circumstantial evidence, including inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme." *Iriele*, 977 F.3d at 1174 (quotation marks omitted).

Quicutis argues that the trial evidence showed she was not involved in any of the actual laundering of the Medicare fraud proceeds, and thus she should not have been convicted of conspiracy to commit money laundering. She contends that the testimony indicated that she was "basically a secretary," and there was no evidence that she "was told of the ultimate plan[] to launder the funds from the Medicare scheme." However, viewing the evidence in the light most favorable to the government, a rational jury could have found Quicutis guilty of conspiracy to commit money laundering based on the circumstantial evidence presented at trial. This evidence includes Quicutis's use of latex gloves to write checks, creating false fingerprints on the checks, working in two small office apartments with her co-conspirators for nearly two years, checking patient eligibility in the underlying Medicare fraud scheme, seeing another co-conspirator carrying grocery bags full of cash into the office apartments, and her inability to tell anyone what she did or where she worked.

II.

Next, Felipe challenges the sufficiency of the evidence supporting his conviction for conspiracy to commit healthcare fraud and wire fraud.

In establishing the knowledge element of a conspiracy, "the government need not prove that the defendant knew all of the details or participated in every aspect of the conspiracy." *United States v. Vernon*, 723 F.3d 1234, 1273 (11th Cir. 2013) (quotation marks omitted). Instead, "the [g]overnment must only prove, beyond a reasonable doubt, that the defendant knew of the essential nature of the conspiracy." *United States v. Gonzalez*, 834 F.3d 1206, 1215 (11th Cir. 2016) (quotation marks omitted).

"Credibility questions are the exclusive province of the jury, and on sufficiency review we must assume that they were answered in a manner that supports the verdict, unless witness testimony is unbelievable as a matter of law." *United States v. Downs*, 61 F.4th 1306, 1316 (11th Cir. 2023) (citation modified). "Testimony is inherently unbelievable only when it is so contrary to the teachings of basic human experience that no reasonable person would believe it beyond a reasonable doubt." *United States v. Kelley*, 412 F.3d 1240, 1247 (11th Cir. 2005) (citation modified).

To convict a defendant of conspiracy to commit wire fraud, the government must prove (1) that a conspiracy to commit wire fraud existed, (2) the defendant had knowledge of the conspiracy, and (3) the defendant knowingly and voluntarily joined the conspiracy. *United States v. Feldman*, 931 F.3d 1245, 1257 (11th Cir. 2019); *see* 18 U.S.C. §§ 1343, 1349.

It is also unlawful for any person to knowingly and willingly attempt or execute a scheme or artifice: "(1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program," and to conspire to do the same. 18 U.S.C. §§ 1347(a), 1349. "Medicare is a 'health care benefit program.'" *United States v. Willner*, 795 F.3d 1297, 1306 (11th Cir. 2015) (quoting 18 U.S.C. § 24(b)). "The elements of a healthcare fraud conspiracy are the existence of an agreement to commit health care fraud in violation of § 1347, the defendant's knowledge of that agreement, and the defendant's knowing and voluntary joinder in that agreement." *United States v. Scott*, 61 F.4th 855, 864 (11th Cir. 2023) (internal citation omitted).

Felipe argues that the trial evidence "amounted to nothing more than guilt by association." He contends that his personal circumstances, such as his drug use and lack of proficiency with the English language, fundamentally precluded any meaningful participation in the conspiracy. We disagree.

Viewing the evidence in the light most favorable to the government, a rational jury could have found Felipe guilty of conspiracy to commit healthcare fraud and wire fraud based on the evidence presented at trial. Co-conspirator Gonzalez-Delgado testified that he explained the Medicare fraud scheme to Felipe and promised him a five percent cut if he mailed a cost report on behalf of the operation.[1] Trial testimony and documentary exhibits indicated that Felipe began receiving his five percent cut shortly after the cost report was mailed. Other testimonial evidence indicated that Felipe answered phone calls from patients, and the term "Medicare" was used around the office daily. Felipe's limitations would not have precluded a rational jury from finding beyond a reasonable doubt that he knew of the essential nature of the conspiracy and voluntarily joined it.

III.

In her reply brief, Quicutis challenges the sufficiency of the evidence supporting her conviction for conspiracy to commit healthcare fraud. Issues not raised in an appellant's initial brief and

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[1] The jury has exclusive province on any question of Gonzalez-Felipe's credibility, as his testimony is not "unbelievable as a matter of law." *United States v. Downs*, 61 F.4th 1306, 1316 (11th Cir. 2023).

instead raised for the first time in a reply brief are abandoned. *United States v. Magluta*, 418 F.3d 1166, 1185–86 (11th Cir. 2005). "Absent an affirmative waiver by a party, we may exercise our discretion to address an issue not raised in an opening brief in extraordinary circumstances." *United States v. Campbell*, 26 F.4th 860, 887–88 (11th Cir. 2022) (en banc).

Here, Quicutis has abandoned her challenge to the sufficiency of the evidence supporting her conviction for conspiracy to commit healthcare fraud and wire fraud by failing to raise this argument in her initial brief and instead presenting it for the first time in her reply brief.[2] Thus, we decline to address this issue.

IV.

Next, Quicutis challenges the district court's imposition of a two-level sophisticated means enhancement to her offense level under U.S.S.G. § 2B1.1(b)(10)(C). She concedes that the overall scheme to defraud Medicare and launder the stolen money was "no doubt" sophisticated, but argues that the intentional conduct she personally engaged in was not sophisticated.

We review the district court's factual findings for clear error and its interpretation and application of the Guidelines to the facts de novo. *United States v. Barrington*, 648 F.3d 1178, 1194–95 (11th

[2] There are no extraordinary circumstances present that would warrant sua sponte review of this issue. *See United States v. Campbell*, 26 F.4th 860, 872–73 (11th Cir. 2022) (en banc). There is sufficient evidence to support Quicutis's conviction, and declining to consider this issue would not result in a miscarriage of justice. *See id.*

Cir. 2011). A "district court's finding that sophisticated means were used is a finding of fact that is reviewed for clear error." *United States v. Presendieu*, 880 F.3d 1228, 1248 n.12 (11th Cir. 2018).

Under the Sentencing Guidelines, a defendant's base offense level for a money laundering offense is "[t]he offense level for the underlying offense from which the laundered funds were derived, if . . . the defendant committed the underlying offense . . . and . . . the offense level for that offense can be determined." U.S.S.G. § 2S1.1(a)(1). The offense level for a fraud offense is calculated under § 2B1.1. *Id.* The fraud guideline provides a two-level enhancement to a defendant's offense level if "the offense . . . involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means." *Id.* § 2B1.1(b)(10)(C).

In 2015, the Sentencing Commission amended § 2B1.1(b)(10)(C) to narrow its focus to the sophistication of the defendant's conduct rather than the totality of the scheme. *See Presendieu*, 880 F.3d at 1248; U.S. Sentencing Commission, *Adopted Amendments (Effective November 1, 2015)*, Amendment 792. In doing so, the Commission explained that "basing the enhancement on the defendant's own intentional conduct better reflects the defendant's culpability and will appropriately minimize application of this enhancement to less culpable offenders." U.S.S.G. app. C, amend. 792. After the 2015 amendment, "the sophisticated means enhancement is both offense-based *and* defendant-based," and a district court must "determine whether the defendant [herself] intentionally engaged in or caused the conduct constituting sophisticated means." *United States v. Buchanan*, 146 F.4th 1342, 1357 (11th Cir. 2025).

The court applied a two-level sophisticated means enhancement to Quicutis's offense level, which resulted in a total offense level of 35 rather than 33. But the district court did not provide a finding as to whether Quicutis's own intentional conduct was sophisticated, and subsequently, why her conduct would warrant application of the sophisticated means enhancement. Thus, we vacate and remand to provide the court with an opportunity to address this enhancement application.

V.

Quicutis next challenges the district court's imposition of a two-level enhancement to her offense level under U.S.S.G. § 2S1.1(b)(2)(B) based on her conviction for conspiracy to commit money laundering.

While Quicutis objected to the sufficiency of the evidence supporting Count Two at trial, she did not raise sufficiency of the evidence as a legal basis for challenging the § 2S1.1(b)(2)(B) enhancement during her sentencing proceedings; instead, she argued that the enhancement violated grouping rules or constituted impermissible double counting. A defendant "fails to preserve a legal issue for appeal if the factual predicates of an objection are included in the sentencing record, but were presented to the district court under a different legal theory." *United States v. Massey*, 443 F.3d 814, 819 (11th Cir. 2006).

"When the appealing party does not clearly state the grounds for an objection in the district court, we are limited to reviewing for plain error." *United States v. Massey*, 443 F.3d 814, 818 (11th Cir. 2006). Plain error requires (1) an error (2) that is plain and (3) that affects substantial rights. *United States v. Rodriguez*, 398 F.3d 1291, 1298 (11th Cir. 2005).

The Guidelines require a two-level sentencing enhancement when the defendant is convicted of conspiracy to commit money laundering. U.S.S.G. § 2S1.1(b)(2)(B) (2023). The Guidelines further provide that "[a]n instruction to use the offense level from another offense guideline refers to the offense level from the entire offense guideline." *Id.* § 1B1.5(b)(1).

Quicutis argues that the district court erred in applying the two-level enhancement under § 2S1.1(b)(2)(B) because there was insufficient evidence supporting her guilt as to Count Two and even if there was, there was no reason to apply the additional two levels. We disagree. As we explained in our analysis of Issue I, there is sufficient evidence to support her guilt as to the money laundering conspiracy charge.

The district court did not err in applying the § 2S1.1(b)(2)(B) enhancement after applying the § 2B1.1 enhancements. Under § 2S1.1(a)(1), Quicutis's base offense level for her money laundering offense was the "offense level for the underlying offense from which the laundered funds were derived." This guideline required the court to determine Quicutis's offense level for the underlying health care fraud and wire fraud scheme, which in turn implicated the enhancements under § 2B1.1. *See id.* §§ 2B1.1, 1B1.5(b)(1). Once Quicutis's base offense level was calculated under §§ 2S1.1(a)(1) and 2B1.1, she was subject to applicable additional enhancements under the money laundering guideline, including § 2S1.1(b)(2)(B) because she was convicted of conspiracy to commit money laundering under 18 U.S.C. § 1956.[3]

VI.

Felipe contends that the district court imposed a procedurally unreasonable sentence because it failed to consider his argument that he proceeded to trial only because the government declined to agree to recommend a minor role adjustment during plea

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[3] The government explains Quicutis's argument as claiming the district court erred when it impermissibly engaged in double counting without using the exact phrase "double counting." But even if Quicutis sought to argue double counting, it fails. "Double counting a factor during sentencing is permitted if the Sentencing Commission . . . intended that result and each guideline section in question concerns conceptually separate notions relating to sentencing." *United States v. Stevenson*, 68 F.3d 1292, 1294 (11th Cir. 1995) (per curiam). Here, Quicutis's enhancement under § 2S1.1(b)(2)(B) was the only enhancement that accounted for the specific type of money laundering that she engaged in. *See United States v. Demarest*, 570 F.3d 1232, 1243 (11th Cir. 2009) (explaining that the imposition of a two-level enhancement under § 2S1.1(b)(2)(B) based on a defendant's conviction for conspiracy to commit money laundering did not constitute impermissible double counting because "[t]he base offense level for money laundering does not distinguish between the various money-laundering statutes"). Thus, the district court did not err in applying the § 2S1.1(b)(2)(B) enhancement.

negotiations. Felipe characterizes this argument as a relevant factor that was due significant weight.

We review the substantive reasonableness of a sentence under a deferential abuse of discretion standard. *United States v. Oudomsine*, 57 F.4th 1262, 1266 (11th Cir. 2023).

Under 18 U.S.C. § 3553(a), "a sentencing court must impose a sentence that is sufficient, but not greater than necessary to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence, and to protect the public from further crimes of the defendant." *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022) (internal quotation marks omitted); 18 U.S.C. § 3553(a)(2). A district court must also consider, among other factors, the nature and circumstances of the offense, the history and characteristics of the defendant, the sentencing range established for the applicable category of offense committed by the applicable category of defendant under the Sentencing Guidelines, and the need to avoid unwarranted sentence disparities among similarly situated defendants. 18 U.S.C. § 3553(a)(1), (4)(A), (6). The weight given to any § 3553(a) factor is committed to the discretion of the district court. *United States v. Olson*, 127 F.4th 1266, 1276 (11th Cir. 2025).

At the sentencing hearing, Felipe argued that he should be given "points for acceptance of responsibility" because he only went to trial to justify that he was merely a minor player in the scheme. Felipe contended that the government's refusal to recommend a minor role adjustment during plea negotiations was the reason he proceeded to trial. Now, Felipe argues that the district court refused to consider his argument. We disagree.

At the sentencing hearing, the district court disagreed with Felipe that it should have credited him for acceptance of responsibility despite his decision to put the government to its burden of proof at trial. The court explained that Felipe could have "throw[n] [himself] on the mercy of the court" and pled guilty without a plea agreement. The court did not fail to consider Felipe's argument; instead, it indicated that the argument offered little justification for Felipe's failure to accept responsibility, as he could have still pled guilty without a plea agreement. The court later reinforced this finding when it noted that Felipe had never accepted responsibility for his offense. Additionally, the weight to assign this factor relative to the other sentencing factors was committed to the district court's discretion. *See Olson*, 127 F.4th at 1276.

VII.

Felipe contends that the district court's order that he pay $44,351,817 in restitution violated his Sixth Amendment rights under *Southern Union Co. v. United States*, 567 U.S. 343 (2012), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). He also argues that the district court violated the Mandatory Victims Restitution Act (MVRA) by failing to specify the payee to whom restitution is owed in its written judgment.

We review a challenge to the legality of a restitution order de novo. *United States v. Robertson*, 493 F.3d 1322, 1330 (11th Cir. 2007). "A district court has authority to order restitution only as authorized by statute." *United States v. Edwards*, 728 F.3d 1286, 1291 (11th Cir. 2013). The MVRA requires a district court to grant restitution to the victim of an offense "in which an identifiable victim or victims has suffered a . . . pecuniary loss." 18 U.S.C. § 3663A(a), (c)(1)(B). The government can count as a "victim" under the MVRA. *United States v. Mateos*, 623 F.3d 1350, 1370 (11th Cir. 2010).

In *Apprendi*, the Supreme Court held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. In *Southern Union*, the Supreme Court held that "the rule of *Apprendi* applies to the imposition of criminal fines," and, thus, "that juries must determine facts that set a fine's maximum amount." 567 U.S. at 356, 360. After *Southern Union*, we reaffirmed our prior holding that *Apprendi* does not apply to restitution orders. *United States v. Gatlin*, 90 F.4th 1050, 1074 (11th Cir. 2024).

As Felipe concedes, his Sixth Amendment challenge to the restitution order based on *Southern Union* and *Apprendi* is foreclosed by our decision in *Gatlin*. Additionally, the district court's failure to specify a payee to whom restitution is owed in its written judgment provides no basis for vacating Felipe's sentence because the court explicitly identified Medicare as the victim at sentencing.

But because the written judgment does not identify the victim, we can remedy this conflict by issuing a limited remand with instructions for the district court "to enter an amended judgment that conforms to its oral pronouncement." *United States v. Chavez*, 204 F.3d 1305, 1316 (11th Cir. 2000). Thus, we remand with instructions for the district court to clearly identify the Centers for Medicare and Medicaid Services respectively as the victim to whom restitution is owed.[4]

VIII.

Thus, we affirm Quicutis's and Felipe's convictions. We affirm Felipe's sentence with limited remand to fix a clerical error. We vacate Quicutis's sentence and remand for further proceedings on whether the sophisticated means enhancement applies.

AFFIRMED in part, VACATED in part, and REMANDED WITH INSTRUCTIONS.

[4] Federal Rule of Criminal Procedure 36 allows for the corrections of clerical errors, such as errors that are "minor and mechanical in nature." *United States v. Portillo*, 363 F.3d 1161, 1164–65 (11th Cir. 2004) (per curiam). When we identify a clerical error in a judgment, "we remand with instructions for the district court to correct the judgment." *United States v. Read*, 118 F.4th 1317, 1322 (11th Cir. 2024). We have previously held that a difference between the payees identified in a written restitution order and the payees identified at sentencing was a clerical error subject to correction under Rule 36. *Portillo*, 363 F.3d at 1165.