NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13113

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUERBY RENE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cr-20020-JEM-1

Before GRANT, LAGOA, and ABUDU, Circuit Judges.

PER CURIAM:

In the wake of the Covid-19 pandemic, the Small Business Administration received 21 million applications for emergency loans. Two of them came from Guerby Rene, who applied for $243,500 on behalf of 365Live Inc. and Excel Booking Group Inc.

The Administration approved the applications, and once the money hit his account, Rene went on a spending spree—dropping six figures on a Lamborghini and spending tens of thousands more on flights, luxury hotels, and personal debts. Nearly two years later, he sought another $674,000, but this time the Administration denied his request.

Eventually, the government charged Rene with three counts of wire fraud and two counts of money laundering. The jury convicted him on the wire fraud charges, and the district court sentenced him to 37 months. Rene appeals, challenging the sufficiency of the evidence and raising a variety of alleged errors with his trial and sentencing. We are unpersuaded and affirm.

I.

After Covid-19 struck, the Small Business Administration expanded the Emergency Injury Disaster Loan program. Successful applicants received six months of working capital and an optional advance that scaled with their employee numbers.[1] Rene applied on behalf of two of his businesses: 365Live and Excel Booking. 365Live was an event planning business while Excel Booking did rentals for luxury cars, yachts, and more. Rene's application for 365Live listed a 2015 start date, six employees, and $220,000 in annual revenue. As for Excel Booking, he again claimed six employees, but placed the start in 2018 and the revenue

[1] When you subtract the cost of goods sold from revenue, the remainder is working capital. The advance was $1,000 per employee for up to $10,000.

at $375,000. After submitting the applications, Rene filled out loan agreements certifying that he would use the funds "solely as working capital to alleviate economic injury caused by disaster."

Rene also falsely claimed to be a United States citizen on his loan applications, but that misstatement mattered less because permanent residents could receive the loans if they proved their legal status.

Rene's deception was not immediately discovered, in part because the Administration relied on applicants to certify the information as true under penalty of perjury before it would issue funds. Rene received his in three installments: (1) a $6,000 advance for his 365Live application, based on his six purported employees, (2) an $87,500 loan for 365Live which arrived two weeks later, and (3) a $150,000 loan for Excel Booking which came after another week.

The day after he received the 365Live loan, Rene made a $121,472.86 down payment for a lease on a Lamborghini Urus. He followed it up with flights and stays at the Four Seasons, the Ritz Carlton, and other luxury hotels. He even cut a check for $20,906 to pay a personal debt to the IRS.

A year into the pandemic, the Administration changed the funding formula: the cap increased from six months of working capital to two years. Applicants just had to "check the box" to request an increase. Rene sought another $674,000 for Excel Booking, but the Administration flagged his application as fraudulent and denied it.

More time passed, and the repayment period for the loans came, but Rene ignored letters, emails, and more than ninety phone calls from the Small Business Administration. Eventually, it wrote off his 365Live loan as a loss and placed an internal hold on the Excel Booking Loan.

But Rene was not in the clear. Five months after the Administration ceased its collection efforts, federal prosecutors charged him with three counts of wire fraud—one for each of the requests—and two counts of money laundering.

Rene went to trial, and the jury convicted him on the wire fraud charges, but acquitted him on the money laundering ones. The judge sentenced him to 37 months' imprisonment. He now appeals.

II.

Rene challenges the sufficiency of the evidence underlying his conviction and raises evidentiary, procedural, and cumulative error claims, and challenges to his sentence. None persuade us.

A.

Rene first claims that there was insufficient evidence to convict him on the three wire fraud counts. He says the government failed to show material misrepresentations.[2] Not by a long shot.

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[2] We review challenges to the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the government. *United States v. Nerey*, 877 F.3d 956, 967 (11th Cir. 2017). Evidence is sufficient unless "no rational

Wire fraud occurs when "a person (1) intentionally participates in a scheme or artifice to defraud another of money or property, and (2) uses or causes the use of the mails or wires for the purpose of executing the scheme or artifice." *United States v. Ward*, 486 F.3d 1212, 1221–22 (11th Cir. 2007) (quotation omitted); *see* 18 U.S.C. § 1343. A fraudulent scheme attempts "to obtain the victim's money or property" and need not seek economic injury to the victim. *Kousisis v. United States*, 605 U.S. 114, 124 (2025) (quotation omitted).

The materiality requirement separates "everyday misstatements from actionable fraud." *Id.* at 131. A "misrepresentation is material if a reasonable person would attach importance to it in deciding how to proceed, or if the defendant knew (or should have known) that the recipient would likely deem it important." *Id.*

When a jury hears two plausible narratives, one supporting guilt and the other innocence, they are free to reject either theory. *See United States v. Goggin*, 853 F.2d 843, 846 (11th Cir. 1988).

Rene's first count concerned his 2020 loan application for 365Live. Under the government's theory, Rene lied about 365Live's revenue, establishment date, and number of employees, as well as whether he would use the loan to help his business.

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trier of fact could have found proof of guilt beyond a reasonable doubt." *Id.* (quotation omitted).

These fraudulent statements led the Administration to give 365Live an $87,500 loan plus a $6,000 advance.

We start with Rene's misrepresentation about revenue. Under Administration formulas, loan amounts scaled with the revenue claimed for the review period: February 2019 to January 2020. Rene did not open a bank account for 365Live until January of 2020, and the only transaction in the review period was a deposit of $500. Even so, Rene claimed $220,000. In his defense, Rene said that he ran the business through his personal accounts, but the jury was free to reject his argument and find that he misstated the revenue numbers. *See id*.

Next, the establishment date. On his loan application, Rene claimed the business started in 2015, but he did not file articles of incorporation until 2019. And on an immigration form submitted in 2022, Rene said the business started in 2017. As Rene points out, a business can certainly predate its formal incorporation. But his conflicting answers provided ample evidence for the jury to discredit his self-serving assertions and to find in favor of the government's position—that Rene lied about when the business started.

Then, there is the number of employees. Rene claimed that 365Live had six employees, which let him receive a $6,000 advance. But the government showed that Rene never submitted employment tax returns, and 365Live's bank account had no payroll payments. Rene claims that's because he hired contractors who have different filing requirements. But 365Live's 2019 tax

return lists no costs for labor or wages. The jury had plenty of evidence to conclude that Rene lied about the number of employees.

Finally, usage. Rene signed a loan agreement affirming that he would use the funds "solely as working capital to alleviate economic injury." But his accounts told a different story: Instacart, flights, hotels, and even a Lamborghini. Rene claims these were all legitimate business expenses for an entertainment company, but the government provided sufficient evidence for the jury to reject his explanation and see the spending as personal.

Each of these misrepresentations—regarding annual revenue, date of establishment, the number of employees, and the use of the funds—was material, providing ample support for the jury's verdict. *See Kousisis*, 605 U.S. at 131.

The second count concerned Excel Booking. On that application, Rene claimed $375,000 in revenue and a 2018 establishment date. And, as with 365Live, he claimed six employees and pledged to use the funds only as working capital. Rene's briefing devotes a single paragraph to Count Two that raises the "same reasons for finding insufficiency of the evidence" as he does for Count One (without explaining what they are), and we reject them for the same reasons.

The third count dealt with Rene's Excel Booking loan modification, submitted nearly two years after his initial application. Rene sought another $674,000 in funds based on his earlier application. Plus, he attached a 2019 tax return for Excel

Booking that he had never submitted to the IRS. Rene again raises the "same reasons for finding insufficiency" as he did under the first two counts, and we again reject them. As for the Excel Booking tax return, Rene argues that the government admitted that he submitted it to the IRS. Not so. The government's evidence showed that only 365Live had submitted a 2019 return. Its evidence was sufficient to support the verdict on Count Three.

Rene makes several other objections. He first argues that his acquittal on the money laundering charges shows that he used the funds in furtherance of his business. But we do not infer facts from potentially inconsistent jury verdicts. *See United States v. Green*, 981 F.3d 945, 960–61 (11th Cir. 2020). He also argues he did not cause—or even intend to cause—economic injury because he was always able to repay the loan, but, after *Kousisis*, neither is required. 605 U.S. at 124.

In short, Rene's challenges to the sufficiency of the evidence fail.

B.

Rene next argues that the immigration documents—a request for naturalization and records from Rene's removal proceedings—were improperly admitted and that the government's presentation of that evidence constructively altered the indictment by leading the jury to convict him for falsely

claiming to be a citizen, a misstatement uncharged in the indictment.[3] We disagree.

Rule 404(b)(2) allows in prior bad acts evidence "to show, among other things, motive, preparation, knowledge, and intent." *United States v. Barrington*, 648 F.3d 1178, 1186 (11th Cir. 2011). And Rule 403 bars evidence "if its probative value is substantially outweighed by" unfair prejudice, among other things. Fed. R. Evid. 403. To determine if Rule 404(b) evidence is admissible, we work through three steps: "(1) the evidence must be relevant to an issue other than the defendant's character; (2) there must be sufficient proof so that the jury could find that the defendant committed the extrinsic act; and (3) the evidence must possess probative value that is not substantially outweighed by undue prejudice." *Barrington*, 648 F.3d at 1186

Here, the first two steps are easy. Inconsistencies between the immigration documents and his loan applications tended to show that Rene's misrepresentations were intentional. And Rene

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[3] "We review evidentiary rulings for abuse of discretion." *United States v. Brown*, 125 F.4th 1043, 1052 (11th Cir. 2025). But we review de novo whether "the exclusion of evidence violated a constitutional guarantee." *United States v. Sarras*, 575 F.3d 1191, 1209 n.24 (11th Cir. 2009).

Rene also claims that the admission of the evidence violated the Fifth Amendment's due process protections, but he cites no authorities and so has abandoned the argument. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014).

does not contest that he filled out the immigration forms in question.

For the third step, we weigh the probative value of the evidence against any undue prejudice it may have caused. The evidence was meaningful in several ways. To start, Rene failed to list 365Live as an employer on his naturalization form in 2017, despite claiming on his loan application that he had founded 365Live in 2015. Then, just a month before the 2022 Excel Booking modification, an immigration judge found that Rene had previously "made a false claim to U.S. citizenship with the subjective intent of obtaining a benefit"—voting. This suggests that his affirmation of citizenship on the loan modification was intentional. Finally, on the same day that Rene submitted his 2022 Excel Booking loan modification, he failed to list the company as an employer on another immigration form. That same form also listed no assets while his loan modification claimed a net worth of more than $13 million. Together, this evidence shows inconsistencies that suggest an intent to deceive.

Rene claims the evidence prejudiced him in several ways. He first argues that raising his lies about citizenship constructively amended the indictment and may have led to his conviction on those grounds. But the government used the inconsistencies across the forms to emphasize his intent and lack of mistake, not to provide a separate basis for conviction. Rene's argument here is unsupported by the record, and we reject it.

Rene also argues that disclosing that he voted illegally in an American election was "highly prejudicial." But his own counsel introduced this fact during cross-examination, and Rene "cannot complain here about testimony he elicited." *United States v. Bornscheuer*, 563 F.3d 1228, 1238 (11th Cir. 2009).

Finally, Rene says that findings from an immigration judge prejudiced him by overwhelming the jury's independent judgment. But the government volunteered only the immigration judge's finding that Rene had claimed United States citizenship to obtain a benefit, and the indictment did not raise the citizenship issue. We see no error. *See* Fed. R. Evid. 403.

In short, Rene has not shown prejudice that would substantially outweigh the probative value of the evidence. Neither Rule 403 nor Rule 404(b) barred the admission of the immigration documents. *See Barrington*, 648 F.3d at 1186; Fed. R. Evid. 403.

One final note: Rene says there should have been a limiting instruction, but the "failure to give a limiting instruction is error only when such an instruction is requested." *United States v. Miranda*, 197 F.3d 1357, 1360 (11th Cir. 1999). Here, Rene did not do so.

C.

We now move to Rene's argument that the district court violated his Sixth Amendment right to have sufficient time to

prepare a defense.[4] He argues that the district court's failure to grant a continuance to allow him more time to review documents produced by the government was error. Again, we disagree.

In the context of a request for more time to prepare for trial, we uphold the denial of a continuance unless the defendant shows "an abuse of discretion and specific, substantial prejudice." *United States v. Saget*, 991 F.2d 702, 708 (11th Cir. 1993). To make this showing, a defendant "must identify relevant, non-cumulative evidence that would have been presented if his request for a continuance had been granted." *Id.*

Rene's briefing makes only broad references to "hundreds of pages" of "tax and bank records" that he deems "essential." Vague descriptions of vast quantities of documents neither identify them nor explain why they are relevant and non-cumulative. *See id.* Additionally, Rene introduced evidence from the production at trial, further undercutting his argument that he lacked time to prepare documents for presentation.

In any event, the fuller record reveals that the tax records and bank accounts in question were Rene's and within his control, so he would have been able to get them more easily than the government. We see no abuse of discretion in the district court's decision not to grant a continuance.

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[4] We review the denial of a motion for a continuance for abuse of discretion. *United States v. Jeri*, 869 F.3d 1247, 1257 (11th Cir. 2017).

D.

Rene next claims that the district court violated his fair trial and effective assistance of counsel rights under the Fifth and Sixth Amendments, as well as his rights under the Confrontation Clause, when it excluded his Skype messages as a penalty for producing them late.[5] He also claims that, at most, he violated Rule 16, which only applies to his own case in chief, so he should have been able to use the excluded evidence to cross-examine the government's witnesses. *See* Fed. R. Crim. P. 16(b)(1)(A), (d).

To justify reversal of a district court's decision to exclude evidence as a discovery sanction, "a defendant must show prejudice to his substantial rights." *United States v. Petrie*, 302 F.3d 1280, 1289 (11th Cir. 2002) (quotation omitted).

The government first requested reciprocal discovery in February. Toward the beginning of May, Rene's attorney offered to share the Skype login with the government, but claimed to be unable to turn the messages over. The next day, the government reiterated its reciprocal discovery demand and emailed Rene's attorney, but received no response. By May 25, the government had received only a half dozen documents from Rene, despite indications that the defense intended to produce far more. So the government sought and received a court order that all documents

[5] We review sanctions for violations of discovery rules for abuse of discretion. *United States v. Petrie*, 302 F.3d 1280, 1289 (11th Cir. 2002). But we review de novo whether exclusion of evidence violated a constitutional guarantee. *Sarras*, 575 F.3d at 1209 n.24.

had to be produced by May 29 or face exclusion. On May 29, Rene produced 1,320 documents—thousands of pages of text as well as a motley collection of screenshots and spreadsheets—nearly all of which were in an illegible format. The district court found that the production did not comply with its discovery order and excluded the evidence. We see no reason to disagree.

In any event, Rene waived this argument. The federal rules require litigants to cite to the part of the record on which they rely for their claims. *See* Fed. R. App. P. 28(a)(8)(A). Failure to do so "may result in waiver or abandonment." *Nat'l All. for Mentally Ill, St. Johns Inc. v. Bd. of Cnty. Comm'rs of St. Johns Cnty.*, 376 F.3d 1292, 1296 (11th Cir. 2004) (quotation omitted).

Rene's briefing does not tell us which documents were improperly excluded. He references "Skype messages," but fails to cite to any part of the record that would tell us which Skype messages he means. Instead, he cites only to an earlier motion which similarly lacks citations to the record. Given the thousands of pages potentially at issue here, many of which are irrelevant, we find Rene has failed to satisfy the standard set by Rule 28. After all, "judges are not like pigs, hunting for truffles buried in the record." *Murthy v. Missouri*, 603 U.S. 43, 67 n.7 (2024) (alterations adopted and quotation omitted).

E.

Rounding out his trial claims, Rene argues that the errors alleged above, in conjunction with a number he separately

identifies here, require a new trial under the cumulative error doctrine. Again, no.

Under the cumulative error doctrine, a collection of nonreversible errors "can yield a denial of the constitutional right to a fair trial," requiring reversal. *Morris v. Sec'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012). To determine if cumulative error occurred, we consider "the validity of each claim individually," then we examine "any errors that we find in the aggregate and in light of the trial as a whole to determine whether the appellant was afforded a fundamentally fair trial." *Id.*

Rene runs through a litany of purported errors, most out of context and the rest poorly supported, and we reject them. And since we find no error here or above, there can be no cumulative error.

F.

Finally, Rene raises two objections to his sentence.[6] *First*, he says the sentencing court erred by calculating loss based on intended loss rather than actual loss. But we have said that courts should use intended loss when it is greater than actual loss. *United States v. Horn*, 129 F.4th 1275, 1300 (11th Cir. 2025). Doing so here was not error.

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[6] We review the district court's application of the Sentencing Guidelines de novo and its underlying factual findings for clear error. *United States v. Flanders*, 752 F.3d 1317, 1339 (11th Cir. 2014).

Second, Rene objects to the district court's imposition of an obstruction-of-justice sentencing enhancement. At Rene's sentencing, the district court found that he faced a Guidelines range of 37 to 46 months. After considering the parties' statements, the presentence report, and the 18 U.S.C. § 3553(a) factors, the district court sentenced Rene to 37 months' imprisonment. The court said that, even if it had "granted some of the defense objections," it would have given the same sentence because it thought it was "an appropriate sentence in this case."

Even if a district court makes an error, so long as it would have reached the same sentence anyways, and that sentence is reasonable, then any error was harmless. *See United States v. Keene*, 470 F.3d 1347, 1348–49 (11th Cir. 2006). After all, "it would make no sense to set aside this reasonable sentence and send the case back to the district court since it has already told us that it would impose exactly the same sentence." *Id.* at 1350. "A sentence imposed well below the statutory maximum penalty is an indicator of a reasonable sentence." *United States v. Dougherty*, 754 F.3d 1353, 1362 (11th Cir. 2014). Ordinarily, a sentence within the Guidelines range is reasonable. *United States v. Stanley*, 739 F.3d 633, 656 (11th Cir. 2014).

Even assuming the district court erred below, it said it would have imposed the same sentence without the enhancement, so if the sentence is reasonable, there is no need to remand. *See Keene*, 470 F.3d at 1349. It is.

Without the obstruction enhancement, Rene's Guidelines range would have been 30 to 37 months. *See* U.S. Sentencing Guidelines. ch. 5, Pt. A, Sentencing Table (Mar. 2022). So his sentence—37 months—falls within the Guidelines range, even if there had been no enhancement, providing one marker of reasonableness. *Stanley*, 739 F.3d at 656. And the statutory maximum for Rene's offense was 240 months, but his sentence fell far below that, providing another marker of reasonableness. *Dougherty*, 754 F.3d at 1362.

Because the district court made a *Keene* finding, and Rene's sentence was reasonable without the enhancement, any error was harmless.

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We **AFFIRM** the judgment of the district court.