

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13694
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHANNON L. WILKERSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 3:23-cr-00009-TKW-1

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

In November 2001, Army Private First Class Amanda Gonzales was beaten and strangled to death in her barracks room on a U.S. military base in Germany. Over twenty years later,

Shannon Wilkerson, who served on the military base at the time of the murder and had an affair with Gonzales was subsequently tried for the first-degree murder of Gonzales. A jury found Wilkerson guilty of the lesser-included offense of second-degree murder and the district court sentenced him to 360 months' imprisonment.

Wilkerson now challenges his conviction and sentence on appeal. Concerning his conviction, Wilkerson argues that the district court abused its discretion in four ways: (1) by preventing Wilkerson from admitting evidence that another soldier, housed in the same barracks, committed a double homicide a few years later; (2) by denying him certain additional discovery concerning validation studies from the government lab that conducted the DNA testing; and (3) by denying his motion for a new trial. As for his sentence, Wilkerson challenges its procedural and substantive reasonableness.

After careful review, we conclude that the district court did not abuse its discretion or otherwise err on any issue. Thus, we affirm Wilkerson's conviction and sentence.

I. BACKGROUND

A. Factual Background

In 2023, a federal grand jury indicted Wilkerson, charging him with the first-degree murder of Gonzales in 2001, in violation of 18 U.S.C. §§ 1111 and 3261(a)(2). Testimony at trial revealed that Wilkerson and Gonzales were stationed on Fliegerhorst Kaserne, a U.S. military base in central Germany. Wilkerson and Gonzales were housed in different barracks buildings about 500

24-13694

Opinion of the Court

3

feet apart: Wilkerson in building 1323 and Gonzales in building 1326.

Gonzales was discovered murdered in her barracks room on November 5, 2001. She was found on the floor of her room, naked from the chest down, her face was covered by a pair of Army-issued pants, and she had been deceased for some time. She had been beaten and strangled to death. The medical examiner determined that Gonzales was strangled with something wide, such as a person's forearm, with the greatest pressure exerted on the right side of the neck. There was no evidence of forced entry to her barracks room or any defensive wounds on her body. At the time of her death, Gonzales was about five months pregnant.

During the period leading up to the murder, Wilkerson and Gonzales had been carrying on a sexual relationship. For Wilkerson, the relationship was an affair as he was married to another soldier on base.¹ When Wilkerson learned that Gonzales was pregnant, he told another soldier, Cheston Crawford, that he thought he was likely the father, and if so he would take care of the child. However, the pregnancy put pressure on Wilkerson in two ways. First, his wife threatened to leave him if the baby was his. Second, Gonzales threatened "to go to command and let them

¹ Wilkerson was not the only soldier with whom Gonzales was engaged in a sexual relationship; Gonzales was also involved with another soldier, Marcus Johnson, around the same time. However, Marcus was not a suspect in Gonzales's murder because he was away at military training at the time of the murder.

know that [Wilkerson] was the father of her child,” effectively revealing his adultery to command. The punishment for adultery—a criminal offense under Article 134 of the Uniform Code of Military Justice—could include demotion and separation from the Army. Wilkerson, with a “very serious” demeanor, told another soldier that “[i]f [Gonzales] goes to command, I’ll kill her. I promise you I’ll kill her if she goes to the command.”

The night of the murder, Wilkerson was near barracks building 1326, where Gonzales lived, and was unaccounted for around the time of the murder. Specifically, Wilkerson and Crawford were together at a bar on Fliegerhorst until around 2:00 a.m. when the bar closed. Wilkerson wanted to head to another bar off-base to continue the evening, but Crawford did not. Unable to persuade Wilkerson to remain on base, Crawford loaned Wilkerson a gray, hooded sweatshirt to wear because it was cold out. Wilkerson was wearing the sweatshirt when he left Crawford.

However, Wilkerson did not make it off-base because the front gate guards determined that he was too drunk to leave. The guards led him to the barracks building where he lived, building 1323, and departed but they did not see him go inside. Later, around 3:00–3:15 a.m., Wilkerson arrived at soldier Robert Shook’s room in building 1323 carrying Crawford’s gray sweatshirt. While in Shook’s room, Wilkerson told another soldier who was present, Eric Van Odsol, “if anybody asks, my wife asks, I was with you guys drinking all night.” Van Odsol, who agreed that Wilkerson’s request “to lie” on his behalf “seemed odd,” asked Wilkerson why

24-13694

Opinion of the Court

5

he needed them to cover for him, and Wilkerson stated that it was because he had “met up with a couple German girls.” However, Wilkerson had not left the base, and “non-U.S. persons” were not allowed on base because it was “on a very strict lockdown due to the 9-11 attacks . . . less than two months prior.”

Wilkerson stayed in Shook’s room for about 15 minutes before leaving. When Wilkerson departed, he left Crawford’s sweatshirt in Shook’s room. Sometime between 4:00 and 4:30 a.m., Wilkerson woke his friend Auntray Jones. Wilkerson told Jones, “I fucked up. I fucked up,” without elaborating on what mistake he made. Jones recalled that Wilkerson had never acted that way before.

Crawford also observed Wilkerson change his behavior “overnight” in the days after Gonzales was murdered: he transformed from a “lady’s man” “who loved to drink, have a good time, dance a lot [and] talk to a lot of women” into a “very religious” person who was “super Christian,” “stopped drinking,” “stopped smoking,” “stopped going to the club,” and “was only going to church and spending time with his wife [and] family.”

Shawna Steele, a friend of Gonzales and Wilkerson, testified that when Wilkerson became frustrated, he would put his hands around Gonzales’s neck and “play-choke” her. He had also done this to Steele before, and the play-choking was hard enough to hurt.

In 2022, after DNA analysis improved, the U.S. Army Criminal Investigation Laboratory (USACIL) resubmitted

Crawford's gray sweatshirt that Wilkerson was wearing on the night of the murder for DNA testing using STRmix technology.² A mixed-DNA profile was found on the inside right forearm section of the sweatshirt. While "[t]he true number of contributors is never known," USACIL's analyst, Jeffrey Fletcher, opined that the mixed-DNA profile "originat[ed] from three individuals." And when Fletcher "compared the known standards of Crawford, Shannon Wilkerson, and Amanda Gonzales, those three individuals were included as being contributors to the mixed DNA profile that was obtained on the right arm swabbing of the sweatshirt."

Fletcher also tested two hypotheses to evaluate the statistical likelihood ratio that the three contributors to the forearm mixture were Crawford, Gonzales, and Wilkerson, and not a different combination of unknown persons. Based on the testing, Fletcher concluded that first, "[a]ssuming Crawford, Wilkerson, and Gonzales are included as contributors to this DNA mixture, □ this mixed DNA profile is 350 billion times more likely if it would have originated from Crawford, Shannon Wilkerson, and Amanda Gonzales than if it would have originated from Crawford and just

² STRmix is a common and well-established probabilistic genotyping computer software that is used by forensic laboratories around the country to interpret mixed DNA samples. *United States v. Gissantaner*, 990 F.3d 457, 461–65 (6th Cir. 2021). It uses the data obtained from DNA testing and "helps [analysts] interpret DNA mixtures" by "calculat[ing] likelihood ratios" for a given DNA sample. A likelihood ratio gives the likelihood that the DNA came from certain specific individuals as opposed to random unknown persons.

24-13694

Opinion of the Court

7

two unknown individuals.” Second, “[a]ssuming Crawford and Wilkerson, Gonzale[s] [were] still included as being a contributor of this mixture,” “this mixed DNA profile [was] at least 4,000 times more likely if it originated from Crawford, Wilkerson, and Gonzales, than if it originated from Crawford, Wilkerson, and [an] unknown individual.”

Wilkerson testified in his own defense. He maintained that Gonzales had told him that he was not the father of her baby. And he was not concerned about her pregnancy because the rules against adultery were not enforced on the base, and Wilkerson’s wife already knew about the affair. However, he acknowledged that his wife had threatened to leave him if he was the father of the baby. He denied going to Gonzalez’s room on the night of the murder, and he testified that he was “positive” that he did not kill her even though he was very intoxicated that night. He admitted that he gave conflicting statements to investigators about the time he returned to his wife’s room on the night of the murders, but explained that the inconsistencies were because he had “no recollection” of the timespan that night. He denied ever play-choking Gonzales or telling anyone that he would kill her if she reported their affair to command.

Wilkerson also presented his own experts on DNA evidence. Theron Vines, President, DNA Technical Leader, and Quality Assurance Officer of Pure Gold Forensics, a private DNA laboratory that also utilized STRmix technology for DNA testing, testified that he obtained the testing information and parameters

used by USACIL and replicated those parameters in his lab. The DNA mixture proportion ratio for the three contributors to the DNA obtained from the sweatshirt was 84 percent (Contributor 1), 10 percent (Contributor 2), and 6 percent (Contributor 3). Vines's STRmix analysis indicated that the likelihood ratio that Gonzales was a contributor of the DNA mixture was 79—meaning the DNA mixture was “79 times more likely if it originated from Gonzales and two unknown contributors than if it originated from three unknown contributors.” He explained that a likelihood ratio of 79 was very low and offered “limited support for inclusion” of said person as the source of the DNA. But Vines acknowledged that Gonzales could not be excluded either based on this information. When he analyzed the mixture for Crawford's and Gonzales's DNA, the likelihood ratio increased to 182. Vines did not analyze the mixture for a likelihood ratio including Wilkerson's DNA because USACIL had already obtained a likelihood ratio for all three.

Dr. Dan Krane, a DNA expert, testified that in his opinion, Fletcher may have overstated the result when he stated that Crawford, Wilkerson, and Gonzales were contributors to the DNA sample. Krane opined that Fletcher should have instead phrased Crawford, Wilkerson, and Gonzales as being “possible contributors” or that they “could not be excluded as contributors,” and he explained why those distinctions were important at length. He explained that the DNA mixture in this case was a complex, unbalanced mixture with multiple contributors and small quantities of DNA material for the minor contributors—factors

24-13694

Opinion of the Court

9

that directly complicate the DNA interpretation process. Dr. Krane opined that the likelihood ratio of 79 generated by Vines’s STRmix testing provided at best “weak or limited support” that Gonzales was a DNA contributor to the sample, and that the better interpretation was that the results were inconclusive or uninformative.

Following deliberations, the jury found Wilkerson guilty of the lesser-included offense of second-degree murder.

B. Procedural History

Two pretrial and one post-trial motion are relevant to this appeal—a motion *in limine*, a motion to compel, and a motion for new trial. Each will be discussed in turn.

1. Motion *in limine*

First, prior to trial, Wilkerson moved *in limine* to admit evidence of third-party culpability that he argued supported his claim that he was innocent and that someone else on the base murdered Gonzales. Specifically, he sought to introduce evidence that Chinu Kim, a soldier who lived next door to Gonzales at the time of the murder, had no alibi for the night of the murder because he said he was alone in his room, and Kim subsequently committed a double murder of an auto mechanic and the mechanic’s son in 2006 because they took too long to finish fixing his car. Prior to the murders, a witness overheard Kim threaten the mechanic, telling him, “I want my car finished and back to me now or I will kill you and your family. I’ve already made my peace with God. I’ve done this before.” After the car was not returned, Kim shot the

mechanic to death and concealed the body under a blanket. Kim then kidnapped the mechanic's son, bound his hands and feet, stabbed him with a knife multiple times, and cut off parts of his fingers. Kim pleaded guilty to the murders and was sentenced to life imprisonment.

Wilkerson argued that the nature of the murders, the way Kim had concealed the mechanic's body with a blanket, and Kim's statement that he had "done this before" linked Kim to Gonzales's murder and should be admissible in Wilkerson's trial as evidence of Kim's identity as the person who murdered Gonzales.³

The government opposed Wilkerson's motion, arguing that the Kim evidence was inadmissible under Federal Rules of Evidence 403 and 404 because the evidence from the double homicide was too dissimilar to the Gonzales murder—the methods were different, Kim lacked a motive to murder Gonzales, the mechanic was fully covered by blankets while Gonzales was left exposed with only her face covered, and Kim admitted to the double homicide but continued to deny that he killed Gonzales even as he served two life sentences.

The district court denied Wilkerson's motion under Federal Rules of Evidence 402 and 403 because the Kim murder evidence was irrelevant, and its probative value in proving the identity of the

³ Wilkerson acknowledged in his motion that Kim and Gonzales were mere acquaintances on the base, and there was no indication that they "had any relationship of any kind." And Kim was interviewed in connection with Gonzales's murder and denied any involvement.

24-13694

Opinion of the Court

11

murderer was substantially outweighed by its tendency to confuse the issues for the jury. Furthermore, the district court explained that the Kim evidence was also inadmissible because Wilkerson failed to satisfy the “test for admitting extrinsic evidence to prove identity” under Rules 404(b) and 403, even as modified for the rare circumstance in which the defendant offered evidence of third party identity.

2. Motion to Compel

The second pre-trial motion relevant to this appeal is Wilkerson’s motion to compel the government to produce all of the raw data used in USACIL’s internal validation studies for the STRmix program. Per Wilkerson, the raw internal validation data was necessary for his experts to be able to assess the reliability and validity of the DNA analysis and thus “to mount a robust challenge to the DNA evidence.” The government opposed Wilkerson’s motion, arguing that it had already provided enough discovery for the defense to test the reliability and validity of the government’s DNA analysis in this case.

The district court denied Wilkerson’s motion to compel. The court explained that the government had produced (1) “the raw data and parameters used in testing the [DNA] mixture on the sweatshirt that would allow [Wilkerson] to replicate testing and validate (or refute) the results obtained by the Government,” and (2) a 2017 validation report “which provide[d] details on the internal validation studies that were used to establish the parameters for the lab’s use of STRmix in testing.” Thus, the

district court concluded that Wilkerson had received all the information that his experts needed “to assess the reliability of the parameters established by the validation studies and to assess whether the test results in [his] case were within the parameters established by the validation.” The court explained that Wilkerson’s request for the raw data related to the internal validation studies amounted to a “fishing expedition,” and he had failed to show that this data would “significantly alter the quantum of proof in his favor any more than the information that he already ha[d] from the validation report and the case-specific test results.”

Wilkerson moved for reconsideration, narrowing his data request to only the “STRmix output folders” from USACIL’s internal validation study. He maintained that the previously provided validation report did not include “critical information” concerning the output folders that he maintained was necessary to challenge the results of the DNA testing. However, the district court denied the motion as moot after the government produced the requested information from the output folders.

Wilkerson again moved for reconsideration, arguing that the government had produced only “a small portion of the STRmix output folders” that he had sought. The district court denied Wilkerson’s motion, noting that “the Government appear[ed] to have provided [Wilkerson] what he specifically requested in [his] prior motion for reconsideration.” Regardless, the district court explained that it was “simply not persuaded that the defense experts ha[d] not been provided what they need[ed] to assess and

24-13694

Opinion of the Court

13

formulate opinions on the reliability of the Government's DNA test results."

3. Motion for New Trial

The third motion at issue on appeal is Wilkerson's post-trial motion for a new trial. Wilkerson raised four issues relevant on appeal.

First, Wilkerson argued that on several occasions the government did not "correctly state the likelihood ratios generated by its DNA expert witness." Principally, he took issue with Fletcher's testimony that a likelihood ratio reveals "statistically what is the likelihood *that* . . . these individuals are part of the mixture," instead of "*if* . . . these individuals are part of the mixture." The issue with the analyst's testimony, per Wilkerson, was the substitution of "that" for "if," which he explained was a "transposed conditional" that prejudiced the jury against him by overstating the statistical certainty that the DNA sample implicated him. Relatedly, Wilkerson argued that Fletcher improperly testified that Wilkerson and Gonzales *were* contributors to the DNA mixture on the sweatshirt, rather than making a qualified statement that the evidence "supported" them as "possible" contributors. And Wilkerson took issue with the phrasing of a question posed by the prosecution that allegedly "implied that a likelihood ratio of 4,000 was instead a random match probability of 1 in 4,000."

Second, Wilkerson repackaged the arguments he made in his motion to compel, arguing that the district court's denial of his

discovery request for the raw data related to the internal validation studies and the output folders “violat[ed] [his] right to present a full defense” by preventing him from properly cross-examining the government’s DNA analyst “regarding USACIL’s STRmix false positive rate.”

Third, Wilkerson again took issue with the court’s refusal to permit him to introduce the third-party culpability evidence related to Kim’s 2006 double homicide, which he maintained was relevant to his defense that someone else on the base murdered Gonzales.

Finally, Wilkerson argued that “the evidence at trial, when viewed as a whole, failed to establish [his] guilt beyond a reasonable doubt.” Wilkerson pointed to three alleged flaws in the government’s case: the government did not firmly establish Gonzales’s time of death; the DNA evidence “provided at best only moderate support for the possibility that . . . Gonzales’s DNA was on the sleeve of the sweatshirt”; and Gonzales “had at least three other sexual partners during her 5 months in Germany who were never investigated.”

Following the government’s response, the district court denied the motion. As for unobjected-to alleged misstatements concerning the DNA evidence, the district court found it “highly unlikely that the slight grammatical differences between the expert’s testimony and Defendant’s ‘corrected’ versions of that testimony would have been perceptible to the jury or made any difference in the outcome of the trial.” On the second and third issues, the district court concluded that there was no basis for a new

24-13694

Opinion of the Court

15

trial for the reasons stated in its pretrial orders and in the government's response. As for the verdict, the district court concluded that "this is not one of those exceptionally rare cases in which the evidence preponderates so heavily against the verdict that it was a miscarriage of justice," and it rejected each of Wilkerson's asserted flaws in the government's case.

C. Sentencing

At the sentencing hearing, Wilkerson objected to a two-level guideline enhancement for obstruction of justice under U.S.S.G. § 3C1.1. Wilkerson asserted that the enhancement was not appropriate because it was unclear whether the jury rejected his testimony as false since it was possible that the jury could have believed he was telling the truth, but nonetheless concluded that he killed Gonzales while he was drunk and had no memory of it. The district court overruled the objection, concluding that the jury verdict established that the jury found Wilkerson's testimony that he did not do it, that he was not too drunk to remember, and that he was "positive" that he did not kill Gonzales to be false.

Wilkerson then made a statement to the court in which he maintained his innocence and emphasized the toll this case had taken on himself and his family. And he thanked the court for allowing him to present his own witnesses to demonstrate his true character.

After hearing argument as to the appropriate sentence, the district court sentenced Wilkerson to 360 months' imprisonment,

which was an upward variance from Wilkerson’s guideline range of 210 to 262 months’ imprisonment.

In reaching the sentence imposed, the district court made three observations relevant to this appeal. First, the district court explained that the 2001 sentencing guidelines—which applied to Wilkerson—were “too lenient” and failed to “account for the fact that the victim was a fellow Service member, that her unborn child was also killed, or the manner in which she died.” In other words, the guidelines “d[id] not fully capture the aggravating circumstances about the nature of the crime.” The court further noted that the guidelines had since been amended and if the exact same crime were committed today, the applicable guideline range would be life.

Second, the district court considered Wilkerson’s military service record as a positive mitigating circumstance, but ultimately concluded that it deserved less weight because of Wilkerson’s adultery while in service and the murder of Gonzales.

Third, the district court commented that it was “surprised” that although Wilkerson emphasized the toll this case had taken on his own family, he did not acknowledge that Gonzales’s family had also suffered.

Accordingly, after walking through the 18 U.S.C. § 3553(a) factors in detail, the district court varied upward and imposed a sentence of 360 months. The district court explained that an upward variance was warranted because the guideline range was too lenient and failed to capture the aggravating circumstances

24-13694

Opinion of the Court

17

about the murder. The district court explained that it would have imposed the “the same sentence irrespective of [the court’s] rulings on the guideline objections.” Wilkerson timely appealed.

II. DISCUSSION

A. *Exclusion of Evidence of Kim Murders*

Wilkerson argues that the district court abused its discretion in denying his motion to admit third-party culpability evidence of Kim’s 2006 double homicide. He argues that the evidence of Kim’s proximity to Gonzales at the time of the murder, combined with the alleged similarities of Kim’s double homicide to the Gonzales murder and Kim’s statement that he had done this before, reasonably linked Kim to Gonzales’s murder.

A district court has broad discretion in determining the admissibility of evidence. *United States v. Range*, 94 F.3d 614, 620 (11th Cir. 1996). Thus, only a clear abuse of discretion that affects the defendant’s substantial rights warrants reversal. *United States v. Tinoco*, 304 F.3d 1088, 1119 (11th Cir. 2002).

The standard for the admission of evidence “is relaxed when the evidence is offered by a defendant,” but even so the defendant must still demonstrate that the evidence is not offered “to prove the character of a person in order to show action in conformity therewith.” *United States v. Cohen*, 888 F.2d 770, 776 (11th Cir. 1989) (quotations omitted). “When the proffered evidence is shown to have a special relevance to a disputed issue, the court must balance the probative value against the possibility of unfair prejudice.” *Id.* The district court can exclude evidence under Federal Rule of

Evidence 403⁴ “if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury.” *United States v. Starr*, 159 F.4th 901, 907 (11th Cir. 2025) (alteration adopted) (quotations omitted). For instance, the court can exclude “evidence regarding an alternate perpetrator if it does not sufficiently connect the other person to the crime,” such as where the evidence is “merely speculative or remote.” *Id.* (quotations omitted). At a minimum, “there must be some showing of a nexus between the alternate perpetrator and the particular crime with which a defendant is charged.” *Id.* (alteration adopted) (quotations omitted).

Here, the district court did not abuse its discretion in excluding the evidence of Kim’s double homicide in 2006 as Wilkerson’s assertions that the 2006 murders showed a link to Gonzales’s 2001 murder was entirely speculative. First, as Wilkerson himself admitted, other than living across the hall from one another on the base in 2001, there was no evidence that Kim and Gonzales were acquainted in any way. Second, Gonzales’s murder and the 2006 double homicide were markedly different. Kim murdered the mechanic and his son after a personal dispute over a car repair, and he shot the mechanic and then kidnapped, stabbed, and mutilated the mechanic’s son. Gonzales, on the other

⁴ Rule 403 provides that “[a] court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403.

hand, was strangled and beaten. The only similarity that Wilkerson could point to was that Kim covered the mechanic's body with a blanket and Gonzales's face was covered with a pair of pants. The simple fact that both victims were covered or partially covered by something does not tend to show any tie between the murders. Similarly, Gonzales's ambiguous statement before killing the mechanic that he had "done this before" does not show any link to Gonzales's murder. Accordingly, Wilkerson failed to show a sufficient connection between the Kim evidence and Gonzales's murder, and the district court did not abuse its discretion in excluding this evidence. *Id.*

B. Motion to Compel

Wilkerson argues that the district court abused its discretion when it denied his motion to compel the government to produce the raw data related to USACIL's internal validation studies under Federal Rule of Criminal Procedure 16(a), and when it denied his motion for a new trial on this same ground. Further, he argues that the court's error imposed substantial prejudice upon his ability to mount a defense because there is a reasonable probability that the jury would have rendered a different verdict if Wilkerson had received the requested data.

Federal Rule of Criminal Procedure 16 requires the government to permit the defense, upon request, to inspect data and reports of any scientific test, among other items, that are in the government's possession and "are material to preparing the

defense.” Fed. R. Crim. P. 16(a)(1)(E)–(F).⁵ The defendant must explain how the requested information “will be helpful to the defense.” *United States v. Jordan*, 316 F.3d 1215, 1250 (11th Cir. 2003) (quotations omitted). In particular, “the defendant must show more than that the item bears some abstract logical relationship to the issues in the case There must be some indication that the pretrial disclosure of the item would . . . enable the defendant significantly to alter the quantum of proof in his favor.” *Id.* at 1251 (alterations adopted) (quotations omitted).

“We review a district court’s denial of a motion to compel discovery for abuse of discretion.” *United States v. Cuya*, 964 F.3d 969, 970 (11th Cir. 2020). Under this standard, we will “leave

⁵ Federal Rule of Criminal Procedure 16(a)(1)(E) states, in relevant part,

Upon a defendant’s request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government’s possession, custody, or control and . . . the item is material to preparing the defense.

Rule 16(a)(1)(F) states,

Upon a defendant’s request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if: (i) the item is within the government’s possession, custody, or control; (ii) the attorney for the government knows—or through due diligence could know—that the item exists; and (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

undisturbed a district court's ruling unless we find that it made a clear error of judgment or applied the wrong legal standard." *Id.* Similarly, we review the denial of a motion for a new trial for abuse of discretion. *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985).

"Modern DNA testing can provide powerful new evidence unlike anything known before." *Dist. Attorney's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 62 (2009). "Given the persuasiveness of such evidence in the eyes of the jury, it is important that it be presented in a fair and reliable manner." *McDaniel v. Brown*, 558 U.S. 120, 136 (2010). In this case, the government introduced DNA evidence consisting of likelihood ratios that it obtained using the USACIL's STRmix technology, and Wilkerson sought raw data related to USACIL's internal validation studies in addition to the data already produced by the government.

The district court did not abuse its discretion by denying Wilkerson's motion to compel disclosure of the additional data nor did it abuse its discretion in denying his motion for a new trial on this ground. It is undisputed that the government shared with Wilkerson the raw data related to the actual tests performed, the lab's 2017 validation report, the STRmix output files that Wilkerson requested, and the specific parameters used by the DNA analyst in the testing. Although Wilkerson sought additional raw data related to the internal validation studies, his right to present a complete defense was not infringed by the court's failure to order disclosure of the additional data. As the district court found,

Wilkerson could assess the reliability of the parameters established by the validation studies and assess whether the test results in the instant case were within the established parameters based on the data that the government disclosed. Wilkerson failed to show that the disclosure of the additional data “would . . . enable [him] significantly to alter the quantum of proof in his favor.”⁶ *Jordan*, 316 F.3d at 1251 (quotations omitted). Accordingly, we conclude that the district court did not abuse its discretion in denying Wilkerson’s motion to compel or the motion for a new trial on this ground.

C. Motion for New Trial

Wilkerson argues that the district court abused its discretion by denying his motion for a new trial based on (1) alleged misstatements by Fletcher concerning the DNA evidence and an alleged misstatement by the government during its questioning of Fletcher, and (2) the weight of the evidence.

⁶ While Wilkerson contends that his inability to access all of the raw data related to the internal validation studies prevented him from effectively cross-examining the government’s DNA analyst and otherwise impaired his ability to challenge the DNA evidence against him, we are unpersuaded. Despite not having access to all of the data he requested, Wilkerson mounted a significant defense to the DNA evidence and presented his own experts who opined that the DNA evidence on the sweatshirt offered weak or limited support that Gonzales was a contributor to the mixture on the sweatshirt. The jury simply considered and rejected this testimony. Thus, Wilkerson cannot show that the lack of the raw data related to the validation studies impaired his ability to effectively challenge the DNA evidence against him.

Wilkerson argues that the government’s alleged misstatements concerning the DNA likelihood ratios from the sweatshirt misled the jury and constituted false testimony in violation of *Giglio v. United States*, 405 U.S. 150 (1972),⁷ which warrants a new trial. Specifically, he takes issue with (1) Fletcher’s description of the likelihood ratios as showing “that” Wilkerson was a contributor as opposed to showing “if” he was a contributor; (2) Fletcher’s testimony that Wilkerson and Gonzales “were contributors” to the DNA mixture as opposed to “possible contributors,” and (3) the prosecutor’s reference in re-direct questioning of Fletcher to a “1 in 4,000 ” ratio, which Wilkerson argues improperly implied that the likelihood ratio of 4,000 produced by Fletcher’s DNA analysis was instead a random match probability of “1 in 4,000.”

We review this issue for plain error, because Wilkerson’s counsel failed to object to the government’s alleged misstatements at trial. *United States v. Moore*, 22 F.4th 1258, 1264 (11th Cir. 2022). To prevail under plain error review, a party must show (1) an error occurred; (2) the error was plain; (3) the error affected substantial rights; and then, if these three conditions are met, we may correct the error if it (4) would seriously affect the fairness of the judicial proceeding. *United States v. Steiger*, 99 F.4th 1316, 1324 (11th Cir.

⁷ To warrant a new trial based on a *Giglio* violation, the defendant must show that the government “knowingly used perjured testimony or failed to correct what [it] subsequently learned was false testimony, and that the falsehood was material.” *United States v. Vallejo*, 297 F.3d 1154, 1163–64 (11th Cir. 2002) (quotations omitted).

2024) (en banc). For an error to affect substantial rights, “the error must have been prejudicial: It must have affected the outcome of the district court proceedings.” *United States v. De La Garza*, 516 F.3d 1266, 1269 (11th Cir. 2008) (quotations omitted). “The defendant has the burden of persuasion as to prejudice.” *Id.*; *United States v. Hesser*, 800 F.3d 1310, 1325 (11th Cir. 2015) (“Substantial rights are affected if there is a reasonable probability of a different result absent the error.”).

Here, concerning Fletcher’s description of the likelihood ratios, Wilkerson cannot show any plain error occurred because he points to no precedent from this Court or the Supreme Court that dictates the specific language an expert must use when discussing likelihood ratios related to DNA evidence. *See Hesser*, 800 F.3d at 1325 (“Where the explicit language of a statute or rule does not specifically resolve an issue, there can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving it.” (alteration adopted) (quotations omitted)). Moreover, the record shows that in other instances when describing the likelihood ratio evidence, Fletcher used the desired “if” phrasing. And it was clear from the entirety of Fletcher’s testimony as well as Wilkerson’s experts that the DNA evidence reflected potential contributors and not statistical certainties. Thus, even if plain error occurred, Wilkerson cannot show that these alleged misstatements affected his substantial rights. *De La Garza*, 516 F.3d at 1269; *Hesser*, 800 F.3d at 1325 (“Substantial rights are affected if there is a reasonable probability of a different result absent the error.”).

As for the prosecutor's reference during redirect questioning of Fletcher about a "1 in 4,000" ratio,⁸ Wilkerson cannot show that the reference to "1 in 4,000" affected his substantial rights. Questions by counsel are not evidence and any potential prejudice was eliminated by the district court's instruction that statements of counsel were not evidence. See *United States v. Verdeza*, 69 F.4th 780, 792 (11th Cir. 2023). Moreover, the 4,000 likelihood ratio was discussed several other times during Fletcher's testimony as establishing that "[t]he mixed DNA profile was 4,000 times more likely if it originated from Crawford, Wilkerson, and Gonzales than if it would have originated from Crawford, Wilkerson, and an unknown individual." Thus, the prosecutor's passing reference to 1 in 4,000 during redirect questioning was not material and Wilkerson cannot show prejudice.

Finally, Wilkerson argues that the totality of the evidence preponderates sufficiently against the jury's guilty verdict and that it would be a miscarriage of justice to let the verdict stand. "Motions for new trials based on weight of the evidence are not favored" and should be granted "only in those really exceptional cases." *Martinez*, 763 F.2d at 1313 (quotation omitted). When considering a motion for new trial based on the weight of the evidence, "the court need not view the evidence in the light most favorable to the verdict. It may weigh the evidence and consider the credibility of the witnesses." *Id.* at 1312. If the court concludes

⁸ Specifically, the prosecutor asked Fletcher, "And that 1 in 4,000, [Wilkerson's counsel] asked you [about], it comes to a scaling of moderate support, right?"

that, “despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.” *Id.* “The decision to grant or deny a new trial motion based on the weight of the evidence is within the sound discretion of the trial court,” and we review the district court’s decision for an abuse of discretion. *Id.*

We conclude that the district court did not abuse its discretion in denying Wilkerson’s motion based on the weight of the evidence because the evidence did not “preponderate heavily against the verdict.” *Id.* at 1313. Rather, Wilkerson’s argument can be summed up as repeatedly pointing out how the jury “could” have interpreted various pieces of conflicting evidence. But we will not set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because some other result might be more reasonable. *See id.* at 1313. This is especially the case here, where Wilkerson took the stand to tell his side of the story in full, and the jury rejected it. *See United States v. Brown*, 53 F.3d 312, 314 (11th Cir. 1995) (“[A] statement by a defendant, if disbelieved by the jury, may be considered as *substantive evidence of the defendant’s guilt*.” (emphasis in original)). Thus, the district court did not abuse its discretion in denying the motion for new trial on this ground.

D. Reasonableness of Sentence

Wilkerson argues his sentence was procedurally and substantively unreasonable. As for his procedural challenge, he argues that the district court improperly calculated his guideline range by adding a two-level enhancement for obstruction of justice. And he argues that his sentence was substantively unreasonable because the district court “attached inappropriate weight to subsequent changes to the sentencing guidelines,” improperly discounted his military service, and “improperly relied on Wilkerson’s failure to apologize to Gonzales’s family.” We address each challenge in turn.

i. Procedural reasonableness

A district court imposes a procedurally unreasonable sentence when it miscalculates the guidelines range. *United States v. Carpenter*, 803 F.3d 1224, 1232 (11th Cir. 2015). “We review de novo the interpretation and application of the Sentencing Guidelines.” *United States v. Cingari*, 952 F.3d 1301, 1305 (11th Cir. 2020). We review “factual findings for clear error, and the district court’s application of the guidelines to the facts with due deference, which is tantamount to clear error review.” *United States v. Isaac*, 987 F.3d 980, 990 (11th Cir. 2021) (quotations omitted). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *United States v. Wall*, 116 F.4th 1285, 1296 (11th Cir. 2024) (quotations omitted).

The obstruction of justice guideline enhancement provides that a defendant’s offense level should be increased by two levels if

(A) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, and (B) the obstructive conduct related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) a closely related offense

U.S.S.G. § 3C1.1 (2001). “[A] defendant qualifies for the obstruction enhancement if he commits perjury.” *United States v. Stahlman*, 934 F.3d 1199, 1227 (11th Cir. 2019). Perjury, for purposes of applying the obstruction of justice enhancement is “false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *Id.* (quotations omitted). When, as here, the defendant objects to an obstruction enhancement resulting from his trial testimony, “a district court must review the evidence and make independent findings necessary to establish a willful impediment to or obstruction of justice, or an attempt to do the same.” *Id.* (quotations omitted). “[A] district court’s determination that the obstruction enhancement applies is sufficient as long as the court makes a finding of an obstruction of, or impediment to, justice that encompasses all of the factual predicates for a finding of perjury.” *Id.* (quotations omitted).

Here, the district court applied the obstruction of justice enhancement after making an independent finding that Wilkerson’s testimony at trial that he did not kill Gonzales was

false and constituted perjury in light of the jury's guilty verdict. Wilkerson argues that the district court's finding that he committed perjury when he testified that he did not murder Gonzales was clearly erroneous because the jury could have found him guilty of second-degree murder without finding his testimony false. He maintains that the jury could have concluded that his testimony that he did not kill Gonzales was truthful because he was too intoxicated to remember. While Wilkerson's position may be one permissible view of the evidence, so was the district court's view that the verdict of guilt necessarily meant that the jury found Wilkerson's denials of guilt false. Because there are two permissible views of the evidence, the district court's finding cannot be clearly erroneous. *Wall*, 116 F.4th at 1296. Accordingly, we conclude that Wilkerson's sentence is procedurally reasonable.

ii. Substantive reasonableness

We review the substantive reasonableness of Wilkerson's sentence for abuse of discretion, asking whether the sentence is substantively reasonable in light of the totality of the circumstances. *United States v. Irely*, 612 F.3d 1160, 1188–89 (11th Cir. 2010) (*en banc*). The district court must issue a sentence that is “sufficient, but not greater than necessary” to comply with the purposes of § 3553(a)(2), which include the need for a sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, deter criminal conduct, and protect the public from future criminal conduct. 18 U.S.C. § 3553(a)(2). The court must also consider the “nature and circumstances of the

offense and the history and characteristics of the defendant,” and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” *Id.* § 3553(a)(1), (6).

Importantly, the weight given to a particular § 3553(a) factor “is committed to the sound discretion of the district court,” and it is not required to give “equal weight” to the § 3553(a) factors. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015) (quotation omitted). “We will not second guess the weight given to a § 3553(a) factor so long as the sentence is reasonable under the circumstances.” *United States v. Butler*, 39 F.4th 1349, 1355 (11th Cir. 2022).

A district court “imposes a substantively unreasonable sentence only when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors.” *Rosales-Bruno*, 789 F.3d at 1256 (quotations omitted). We will vacate a sentence as substantively unreasonable only if we are “left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *Irey*, 612 F.3d at 1190.

Here, Wilkerson’s 360-month sentence is substantively reasonable. First, the district court’s determination that the 2001 sentencing guideline range was “too lenient” because it did not

adequately reflect the seriousness of the offense or the aggravating factors was not improper. It is well-established “that variances from the advisory guidelines range can sometimes be based on the sentencing judge’s disagreement with whether a guideline properly reflects the § 3553(a) factors.” *Rosales-Bruno*, 789 F.3d at 1254. While the district court also commented that the guideline range for the same offense if committed today was much higher than Wilkerson’s applicable 2001 guideline range, the district court did not apply the amended range. Rather, the district court merely considered this information as one factor in determining whether to vary upward from the guideline range, which is a permissible consideration. *See United States v. Logal*, 106 F.3d 1547, 1551 (11th Cir. 1997) (holding that the district court may consider an otherwise non-applicable amended guideline for the purpose of determining the degree of an upward departure). Thus, there was no abuse of discretion.

Second, the district court did not improperly discount Wilkerson’s military service record. A district court is well within its discretion to view a defendant’s military service as both aggravating and mitigating. *United States v. Boone*, 97 F.4th 1331, 1343 (11th Cir. 2024). In evaluating Wilkerson’s military service, the district court expressly stated that it was “certainly a mitigating circumstance,” but that his service was counterbalanced by “the ultimate betrayal of [his] uniform by killing a fellow Service member.” Such an analysis indicates that the district court carefully assessed the mitigating circumstances of Wilkerson’s military service, rather than improperly ignoring or discounting it.

While Wilkerson may quarrel with the weight the district court gave his military service, the weight given to a particular § 3553(a) factor “is committed to the sound discretion of the district court.” *Rosales-Bruno*, 789 F.3d at 1254 (quotations omitted).

Finally, the district court’s consideration of Wilkerson’s failure to acknowledge the Gonzales family’s suffering during his allocution at sentencing was not improper. While a defendant has the right to maintain his innocence even after a jury verdict adjudicating him guilty, if he chooses to allocute at his sentencing hearing and fails to indicate any remorse, the district court is within its discretion to consider that fact in sentencing the defendant. *United States v. Stanley*, 739 F.3d 633, 652 (11th Cir. 2014) (“Just as a jury weighs a defendant’s testimony once he waives his Fifth Amendment privilege at trial, a judge may consider a defendant’s freely offered allocution regarding remorse during sentencing.”).

In sum, we are not left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors. We therefore affirm Wilkerson’s sentence as substantively reasonable.

III. CONCLUSION

For the reasons set forth above, we affirm Wilkerson’s conviction and sentence.

AFFIRMED.