NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10983
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOEL DAVID FONSECA FLORES,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cr-00088-RBD-LHP-1

No. 25-11936
Non-Argument Calendar

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Before LUCK, LAGOA, and DUBINA, Circuit Judges.

PER CURIAM:

Appellant Joel David Fonseca Flores appeals his conviction for conspiracy to distribute and possess with intent to distribute fentanyl that resulted in death. Fonseca raises four arguments on appeal: (1) that the district court erred when it denied his motion for a judgment of acquittal because the evidence at trial was insufficient to prove beyond a reasonable doubt that he distributed the fentanyl that caused Natassia Koch's death; (2) that the district court abused its discretion in excluding Koch's employment records because their probative value was not substantially outweighed by the danger of unfair prejudice; (3) that the district court abused its discretion when it denied Fonseca's motion in limine regarding the admission of evidence of firearms and ammunition found in proximity to drugs following the victim's death; and (4) that his conviction should be reversed because there were cumulative errors that occurred during his trial. Having reviewed the record and read the parties' briefs, we affirm Fonseca's conviction.

I.

We review a challenge to the sufficiency of the evidence supporting a conviction and the denial of a motion for a judgment of acquittal *de novo*, viewing the evidence in the light most favorable to the verdict and making all reasonable inferences and credibility choices in favor of the jury's verdict. *United States v. Gamory*, 635 F.3d 480, 497 (11th Cir. 2011). When the defendant raises a claim challenging the sufficiency of the evidence on a ground not argued below, the new ground will be reviewed for plain error only. *United States v. Al Jaberi*, 97 F.4th 1310, 1322 (11th Cir. 2024). "To establish plain error, a defendant must show (1) error; (2) that is plain; (3) that affects his substantial rights; and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quoting *United States v. Lewis*, 40 F.4th 1229, 1246 (11th Cir. 2022).

"The evidence need not exclude every reasonable hypothesis of innocence . . . for a reasonable jury to find guilt beyond a reasonable doubt," and "[t]he jury is free to choose among alternative, reasonable interpretations of the evidence." *United States v. Beach*, 80 F.4th 1245, 1255-56 (11th Cir. 2023). "Evidence will be deemed sufficient to sustain a conviction unless 'no rational trier of fact could have found proof of guilt beyond a reasonable doubt.'" *United States v. Nerey*, 877 F.3d 956, 967 (11th Cir. 2017) (quoting *United States v. Diaz*, 248 F.3d 1065, 1093 (11th Cir. 2001)). "The test for sufficiency of the 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. Watts*, 896 F.3d 1245, 1251 (11th Cir. 2018) (quoting *United States v. Mieres-Borges*, 919 F.2d 652, 656-57 (11th Cir. 1990)). "When the government relies on circumstantial evidence, reasonable inferences, not mere speculation, must support the conviction." *Id.* (quoting *United States v. Mendez*, 528 F.3d 811, 814 (11th Cir. 2008)).

In a prosecution under 21 U.S.C. § 846, the government must establish beyond a reasonable doubt that a conspiracy existed, that the defendant knew of it, and that he voluntarily participated in it. *See United States v. Perez-Tosta*, 36 F.3d 1552, 1557 (11th Cir. 1994). To support a conviction under § 841(a)(1), the government must show that the defendant knowingly or intentionally distributed a controlled substance. 21 U.S.C. § 841(a)(1). There is a penalty-enhancement provision for § 841(a) which provides that a defendant shall be sentenced to a term of not less than 20 years' imprisonment, or more than life, if he distributed a Schedule I or II drug, and death or serious bodily injury "results from the use of such substance." *Id.* § 841(b)(1)(C). The government must prove that the use of the drug was the but-for cause of the victim's death. *See Burrage v. United States*, 571 U.S. 204, 218-19, 134 S. Ct. 881, 892 (2014). "Because the 'death results' enhancement increase[s] the minimum and maximum sentences to which [a defendant is] exposed, it is an element that must be submitted to the jury and found beyond a reasonable doubt." *Id.* at 210, 134 S. Ct. at 887. Fentanyl is a Schedule II substance. 21 U.S.C. § 812(c) Schedule II (b)(6).

The record demonstrates that the district court did not err in denying Fonseca's motion for a judgment of acquittal because reasonable inferences from the circumstantial evidence support the jury's finding that Fonseca distributed the fentanyl that caused Koch's death. *Watts*, 896 F.3d at 1251. Co-defendant Misty Lynn Parady testified that she and Fonseca distributed M30 pills (narcotics) to Koch from 2020 until her death. More specifically, text messages between Koch and Fonseca demonstrated that Koch purchased 20 M30 pills from Fonseca on March 20, 2022, 15 days before Koch died. Detective Kerr further testified that there were five blue M30 pills found in Koch's possessions after her death that tested positive for fentanyl.

The jury could have reasonably inferred that the M30 pills found after Koch's death were the remaining pills she bought from Fonseca on March 20, 2022, and that one of the pills purchased on that date provided the lethal dose. *Nerey*, 877 F.3d at 967. Further, text messages between Koch and Parady demonstrated that Koch suspected that the pills she was buying from Fonseca and Parady contained fentanyl. There was no evidence at trial that Koch suspected the fentanyl to come from any other source. The jury could have reasonably inferred from Koch's suspicions that the fentanyl she was ingesting was coming from the pills she purchased from Parady and Fonseca.

Given the testimony regarding a lack of other suspects, and the evidence of the similarities between the vials used by Fonseca and Koch, it cannot be said that no rational trier of fact could have found Fonseca guilty beyond a reasonable doubt of distributing the fatal dose of fentanyl to Koch. *Nerey*, 877 F.3d at 967. The circumstantial evidence supported findings that Fonseca distributed fentanyl to Koch shortly before her death, that Koch suspected the pills she was purchasing from Fonseca and Parady contained fentanyl, and the evidence revealed no other sources of fentanyl. Therefore, because a reasonable jury could conclude that Fonseca distributed the fentanyl that caused Koch's death, we affirm Fonseca's conviction.

II.

Because "[t]he district court has broad discretion to determine the admissibility of evidence," we "will not disturb the [district] court's judgment absent a clear abuse of discretion." *United States v. McLean*, 138 F.3d 1398, 1403 (11th Cir. 1998). We review for clear error the factual findings underlying the district court's evidentiary rulings. *United States v. Kapordelis*, 569 F.3d 1291, 1313 (11th Cir. 2009).

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. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. Relevant evidence is admissible under Federal Rule of Evidence 402 unless provided otherwise by the Constitution, federal statute, the other Federal Rules of Evidence, or other rules from the Supreme Court. *United States v. McGregor*, 960 F.3d 1319, 1323-24 (11th Cir. 2020). "Rule 403 'is an extraordinary remedy which the district court should invoke sparingly, and the balance should be struck in favor of admissibility.'" *United States v. Lopez*, 649 F.3d 1222, 1247 (11th Cir. 2011) (internal quotation marks omitted).

An error is harmless unless "there is a reasonable likelihood that [it] affected the defendant's substantial rights." *United States v. Hawkins*, 905 F.2d 1489, 1493 (11th Cir. 1990). We need not reverse a conviction if the evidentiary error "had no substantial influence on the outcome and sufficient evidence uninfected by error supports the verdict." *United States v. Fortenberry*, 971 F.2d 717, 722 (11th Cir. 1992). The courts determine whether an error had substantial influence on the outcome by weighing the "record as a whole," *see United States v. Montalvo-Murillo*, 495 U.S. 711, 722, 110 S. Ct. 2072, 2080 (1990), and examining "the facts, the trial context of the error, and the prejudice created thereby as juxtaposed against the strength of the evidence of defendant's guilt." *United States v. Reed*, 700 F.2d 638, 646 (11th Cir. 1983) (internal quotation marks omitted).

The record demonstrates that the district court did not abuse its discretion in excluding the victim's employment records because they had minimal probative value and any error in excluding them was harmless. Because the sole issue at trial was where the lethal fentanyl came from, Koch's employment records were relevant to the extent that they showed Koch obtained fentanyl from a hospital while working as a nurse rather than from Fonseca. *See* Fed. R. Evid. 401. Even if Koch's employment records were relevant, the district court did not abuse its discretion in excluding them because the records had minimal probative value. *See* Fed. R. Evid. 403. The parties asserted that the records showed that Koch refused a drug test after being suspected by her employer of mishandling opiates over a year before her death, but the records did not show that Koch mishandled fentanyl specifically, and they were dated approximately 18 months prior to her death, while Koch purchased drugs from individuals including Fonseca and Parady as late as 15 days before her death.

Further, Fonseca was not prejudiced by the exclusion of Koch's employment records because he was able to elicit the relevant information that would have been introduced through Koch's husband's testimony on cross-examination. Finally, any error in excluding the evidence was harmless because the government presented highly convincing evidence of Fonseca's guilt. We conclude, from the record, that the district court did not err in excluding Koch's employment records at trial.

III.

"Evidence of criminal activity other than the charged offense may be admissible if it is 'intrinsic evidence' of the charged offense." *United States v. Harding*, 104 F.4th 1291, 1296 (11th Cir. 2024) (citing *United States v. Joseph*, 978 F.3d 1251, 1263 (11th Cir.

2020)). "Evidence is intrinsic if it arises out of the same transaction or series of transactions as the charged offense, is necessary to complete the story of the crime, or is inextricably intertwined with the evidence regarding the charged offense." *Id.* "Evidence is inextricably intertwined with a charged crime if it 'forms an integral and natural part of' an account of a crime or is 'vital to an understanding of the context of the government's case[.]'" *Id.* at 1297 (internal quotation marks omitted).

For evidence to arise from the same transaction or series of transactions, it must be "'linked in time and circumstances' with the charged crime." *Id.* (citing *United States v. US Infrastructure, Inc.*, 576 F.3d 1195, 1210 (11th Cir. 2009)). However, we have not imposed a firm temporal proximity requirement. *Id.* "Evidence of uncharged criminal conduct can be linked with the charged crime 'whether the conduct occurs before or after' the charged offense." *Id.* at 1296 (quoting *United States v. Zapata*, 139 F.3d 1355, 1357 (11th Cir. 1998)). We have held that "uncharged acts arise from the same transaction or series of transactions when the uncharged acts involve the same people and criminal scheme." *Id.*

The record shows that the district court did not abuse its discretion in denying Fonseca's motion in limine to exclude evidence of firearms and ammunition found in proximity to drugs possessed by him because it was admissible as intrinsic evidence. *See United States v. Horner*, 853 F.3d 1201, 1213 (11th Cir. 2017) (stating that we review for abuse of discretion a district court's denial of a motion in limine). The firearms and ammunition found in Fonseca's possession during the traffic stop and found in his residence were in close proximity to drugs, including M30 pills. Further, the firearms and ammunition may be considered inextricably intertwined with Fonseca's conspiracy to distribute drugs, as firearms are linked to drug trafficking, and the firearms here were found in proximity to drugs, including M30 pills discovered in Fonseca's residence. *Lopez*, 649 F.3d at 1242 (noting that drugs and guns often "go together" and that guns are tools of the trade in drug trafficking). Even if the district court erred in admitting the evidence of firearms and ammunition, we would not reverse Fonseca's conviction because sufficient evidence uninfected by any error supported the jury's conclusion that Fonseca distributed the fentanyl responsible for Koch's death. *Fortenberry*, 971 F.2d at 722. Thus, we affirm as to this issue.

IV.

The cumulative impact of multiple evidentiary and instructional errors is reviewed de novo. *United States v. Dohan*, 508 F.3d 989, 993 (11th Cir. 2007). Even where individual judicial errors may not be sufficient to warrant reversal alone, the cumulative errors may be considered to determine if the defendant has been denied a fair trial. *United States v. Harris*, 886 F.3d 1120, 1132 (11th Cir. 2018). However, where there is no error or only a single error, there can be no cumulative error. *Id.*

Because we conclude from the record that the district court made no individual error, Fonseca cannot establish cumulative trial error.

Accordingly, based on the aforementioned reasons, we affirm Fonseca's conviction.

AFFIRMED.