

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11657
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUDY OWEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:24-cr-00077-JB-B-2

Before JORDAN, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

Judy Owen and her sisters—Sandra Grimes and Mitzy Smith—plotted to hire a hitman to kill Raul Mena over a child-cus-

tody dispute with Grimes's daughter. After a trial, the jury convicted Owen of murder for hire, conspiracy to commit murder for hire, and transfer of a firearm to be used to commit a felony. She appeals her convictions, arguing that the district court erred by (1) denying her motion for judgment of acquittal because the evidence was insufficient, and (2) denying her motion for a mistrial because the government improperly commented on her right to remain silent. After careful review, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Two of the sisters—Owen and Smith—lived in Fairhope, Alabama, and Grimes lived in Niceville, Florida. Grimes's daughter, Nicole Bauer, had been in an abusive relationship with Raul Mena. Mena “used to hold [Bauer] down and shoot her up with drugs, drag her out in front of [their three daughters], beat her, [and] made her have sex with multiple men.” After they split up, Bauer and Mena were embroiled in a fierce child-custody dispute over their three daughters. Upset by the situation with Mena, the sisters hatched a plot to have him killed. But they got caught before the plan bore fruit.

A grand jury indicted Owen with two counts of murder for hire, one count of conspiracy to commit murder for hire, and one count of transfer of a firearm to be used to commit a felony. Owen's sisters were indicted too. Smith and Owen pleaded not guilty and went to trial. But Grimes pleaded guilty and testified for the government. She explained that the sisters were angry that Mena, who lived in Louisiana, was trying to get custody over

25-11657

Opinion of the Court

3

Bauer's three daughters. They "want[ed] him dead" and had spoken about "possibly killing him."

Smith sent Grimes the contact information for a potential hitman, Edward Lane, and Grimes arranged to meet him in a Buc-ee's parking lot to discuss terms. At the Buc-ee's, Grimes told Lane about the situation with Mena and that she "want[ed] him gone." Lane said he wanted \$10,000 to commit the murder. But Grimes didn't have \$10,000, so she gave him \$1,500 in cash and a burner phone instead, telling him they'd work the final price out later.

A week later, Grimes met Lane again, this time at a Waffle House, and gave him another \$5,500. But then Lane's communication became "sporadic[.]" Grimes called in Owen for backup. Grimes had kept Owen in the loop as she negotiated with Lane, and Owen "knew [] all along" that the plan was to hire Lane to kill Mena. Grimes and Owen went to Lane's trailer home to try to get the money back. Owen "got into it with" Lane, but after he threatened the sisters and tried to push them out the door, they left empty-handed.

After the plan with Lane fell through, Smith introduced Grimes to her next-door neighbor, Rebecca Murphy. Murphy told Grimes she had "hear[d] [she] need[ed] somebody taken care of" and offered to help.

But Murphy also turned government witness. She testified that she discussed "ways to kill [] Mena" with Smith and Grimes. The conversation was cut short when Murphy interjected that she

“couldn’t sit there and talk” because she had to pick up her dog, Boo-boo, from the veterinarian but “didn’t have money for the vet bill.” Smith and Grimes called on Owen to help Murphy retrieve Boo-boo. But the veterinarian refused to release Boo-boo without payment—Murphy was \$450 short—so Owen went and got some money and gave it to the veterinarian in exchange for Boo-boo’s release.

After paying the bill, Owen told Murphy, “you know what you got to do now; you got to take a ride with me.” Later that day, Owen drove Murphy to meet Grimes, and the three drove to Louisiana to scope out Mena’s house. Owen and Grimes tried to convince Murphy to kill Mena, and eventually she agreed to do it for \$5,000. Owen and Grimes split the cost of the murder and agreed on a plan with Murphy: in two weeks, Owen would drive Murphy back to Louisiana, to the courthouse where Mena had an upcoming “child support payment hearing.” Owen and Grimes suggested that Murphy should “shoot him up with heroin” to kill him since Mena “was a drug addict.”

Over the next two weeks, Murphy prepared for the hit. Owen, though, unhappy with the pace of preparations, “would text” her and “get mad because [she] wasn’t doing the job fast enough.” Eventually, Murphy found a source willing to sell her the heroin. On the morning they were to depart, “Owen met [Murphy] and gave her \$300” to “[g]o get drugs to shoot [Mena] up with.” Instead, Murphy secretly used the money to get high on drugs herself.

25-11657

Opinion of the Court

5

The day before Mena’s custody hearing, Owen drove Murphy to Louisiana. Owen and Murphy stayed in a hotel where they rendezvoused with Grimes and her daughter and discussed the plan to kill Mena. Owen gave Murphy gloves and a syringe to inject Mena with the heroin, but Murphy didn’t kill him that night because there were children around. The next day, Owen drove Murphy to the courthouse where Mena was scheduled for his custody hearing. Owen told Murphy that if they saw Mena in the parking lot, Owen would “plow him over” because Murphy “didn’t do [her] job right” the night before. Murphy testified that the sisters “didn’t really care what [she] did. They just wanted him dead.” But Murphy had other plans. As the custody hearing was ending, while Mena was still in the courthouse, Murphy drugged Owen’s drink with blood pressure medication “that make[s] you have to go pee . . . [s]o she would have to go to the bathroom and wouldn’t see him leaving.” The gambit worked, and Mena left the courthouse unscathed. The plan foiled again, Owen drove Murphy back home to Alabama, “cussing” her and calling her “useless” because she “didn’t do what [she] was supposed to do.”

After the sisters’ plan to kill Mena with heroin failed, “another plan developed.” The sisters—not knowing Murphy had used the drugs she’d bought with their money—told her to “sell the drugs . . . and go get a gun.” When she told them she didn’t know where to get a gun, Smith brought her one. Murphy took the gun and, along with her girlfriend, Jessica Montgomery, made another trip to Louisiana to kill Mena. But before long, running low on money and “tired of dealing with” the sisters’ “foolishness,”

Murphy realized “these people were crazy” and returned to Fairhope.

After she returned, Murphy testified that Owen harassed her “[t]hrough text message, over the phone, you just about name it.” Owen “wanted some production for her money” and demanded that Murphy “get off [her] lazy a-- and do what [Owen] paid [her] to do.” Not getting the desired results with these threats, Owen went to Murphy’s trailer and assaulted her. At that point, Murphy “decided it wasn’t safe for me and Boo-boo to stay there no more,” so she contacted law enforcement.

An FBI agent testified that, following Murphy’s tip, investigators seized two of Owen’s phones and retrieved messages where she, Grimes, and Murphy had communicated about the murder plot using burner phones and code names. One message from Owen to Murphy read, “if you not [going to] do nothing we want our money back we got better places to put it.” Owen also texted Murphy, “I’m the one who paid for your dog, my friend who works for the vet knows I paid. I want progress or my money you pick.”

When a second agent testified at trial, the government showed her a chart illustrating the relationships between Owen, Grimes, Smith, Murphy, Montgomery, Mena, and Grimes’s daughter. The government asked the second agent whether “anyone else” besides Murphy was “interviewed as a part of [her] investigation.” The agent said she had interviewed Grimes, Montgomery, Mena, and his neighbors, and others. Then the government asked whether “everyone listed” on the chart “ha[d] been interviewed.”

25-11657

Opinion of the Court

7

The second agent said yes. Owen did not object to the testimony at first. But about fifteen minutes later, Owen moved for a mistrial. She argued that the second agent had represented that she had interviewed her, which amounted to implicitly commenting on her invocation of her right not to testify. The district court denied the motion without prejudice.

When the government rested, Owen moved for a judgment of acquittal. As to the murder-for-hire counts, Owen argued that the evidence “at best” showed she had “traveled in interstate commerce to scope [Mena] out.” There was no evidence that she traveled “with the purpose that [Mena] be executed.” As to the conspiracy count, she asserted that the government hadn’t proved Owen had paid anything to have Mena killed. Finally, as to the firearm-transfer count, she “acknowledge[d]” that “[t]here was some evidence” Owen had known about the firearm transfer “after the fact, but not beforehand,” and maintained that, without knowing in advance about the transfer, she couldn’t be convicted under the statute. The district court denied the motion.

Owen also renewed her motion for a mistrial based on the second agent’s testimony about the witnesses she’d interviewed during her investigation. The district court denied the motion, explaining that the second agent’s testimony was about whether the people on the chart were interviewed—not about whether they testified at trial—and that the testimony didn’t distinguish Owen from the rest of the individuals on the chart.

The jury convicted Owen as charged, and the district court sentenced her to 120 months' imprisonment. Owen appeals her convictions.

STANDARD OF REVIEW

We review de novo the sufficiency of evidence to support a conviction, “viewing the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury’s verdict.” *United States v. Feldman*, 936 F.3d 1288, 1305 (11th Cir. 2019) (quoting *United States v. Taylor*, 480 F.3d 1025, 1026 (11th Cir. 2007)). We will reverse a conviction on sufficiency grounds only if “there is no reasonable construction of the evidence from which the jury could have found the defendant guilty beyond a reasonable doubt.” *United States v. Azmat*, 805 F.3d 1018, 1035 (11th Cir. 2015) (citation modified). We review for abuse of discretion the denial of a motion for a mistrial based on comments about a defendant’s right to remain silent. *United States v. Reeves*, 742 F.3d 487, 504 (11th Cir. 2014).

DISCUSSION

On appeal, Owen argues that the district court erred in denying her motion for judgment of acquittal and her motion for a mistrial. We’ll address each in turn.

25-11657

Opinion of the Court

9

A. Motion for Judgment of Acquittal

Owen argues that the district court erred in denying her motion for judgment of acquittal because the government didn't introduce sufficient evidence to support her convictions for murder for hire, conspiracy to commit murder for hire, and transferring a firearm for the commission of a felony. But there was overwhelming evidence for the jury to convict Owen of each charge.

1. The Murder-for-Hire Counts

Murder for hire has three elements. “[T]he government must prove that the defendant (1) used or caused another to use any facility of interstate or foreign commerce; (2) with the intent that a murder be committed; (3) as consideration for a promise or agreement to pay anything of pecuniary value.” *United States v. Preacher*, 631 F.3d 1201, 1203 (11th Cir. 2011) (citing 18 U.S.C. § 1958(a)). Owen was charged with two counts of murder for hire: one for Owen’s trip with Murphy to the Louisiana courthouse to inject Mena with heroin; and one for Owen’s participation in Murphy’s later trip with her girlfriend to shoot Mena with the gun.

As to the first count, Murphy testified that Owen used a facility of interstate commerce by driving Murphy from Alabama to Louisiana. Murphy also testified that Owen gave her gloves, a syringe, and drug money to buy the heroin to kill Mena with, which showed Owen’s intent that a murder be committed. Grimes testified that Owen paid part of the \$5,000 the sisters spent to hire Murphy, and Murphy testified that Owen paid her veterinary bill to entice her to “take a ride” with Owen and talk about the murder.

Owen framed the payment for Boo-boo's treatment as consideration for Murphy's making "progress" toward the goal of killing Mena, reminding her that Owen was "the one who paid for [her] dog" and that she wanted "progress or [her] money" back.

For the second murder-for-hire count, Owen used a different facility of interstate commerce—her burner phone. *See id.* at 1204 (explaining that "a cellular telephone" satisfies the interstate-facility element of the murder-for-hire statute). Murphy's testimony, as well as the messages the government extracted, showed that Owen used her phone to communicate with Grimes about Murphy's progress and to harass Murphy about her failure to shoot Mena. That harassment was also evidence that Owen intended for Murphy to shoot Mena. And again, both Murphy and Grimes testified that Owen paid at least part of the consideration for Murphy's services. Indeed, Owen explicitly reminded Murphy that she was "the one who paid for [her] dog" and she "want[ed] progress or [her] money" back.

Thus, the jury had enough evidence to convict Murphy on both murder-for-hire counts.

2. The Conspiracy Count

Conspiracy to commit murder for hire has three elements: "(1) an agreement by two or more persons" to commit murder for hire; "(2) the defendant's knowing and voluntary participation in the agreement; and (3) an overt act committed by any one of the conspirators in furtherance of the conspiratorial object." *United*

States v. Hernandez, 141 F.3d 1042, 1053 (11th Cir. 1998). By crediting the government’s evidence, the jury could have found each of these elements beyond a reasonable doubt.

The government introduced Grimes’s testimony that the three sisters had discussed “the plan to kill [Mena]” with Murphy, and that Grimes had “ma[de] the arrangements” for the “murder of [] Mena” with Owen. The government also introduced Murphy’s testimony that she’d “agree[d] to help [Grimes] and [Owen] kill [Mena].”

As to Owen’s knowing and voluntary participation in the agreement, the government introduced Grimes’s testimony that Owen “knew” the plan to kill Mena “all along, because [Grimes] had been talking to her . . . and telling her what [her] plans were.” And Murphy testified that Owen had threatened to “plow [Mena] over” because Murphy hadn’t done her job right.

Finally, as to the overt-act element, the government introduced evidence of several steps that Owen and her co-conspirators took to further the conspiracy. Murphy testified that Owen gave her gloves and a syringe to inject Mena with heroin and that Smith gave her a gun to shoot Mena with.

Owen responds that the texts the government extracted from her phone “do not contain any overt references to a conspiracy to kill [Mena]” and that they “do not mention the words ‘killing’ or ‘murder.’” It’s true that the texts stopped short of explicitly spelling out the details of the plan, but they didn’t need to. As

we’ve explained, “[t]here is rarely any direct evidence of an agreement to join a criminal conspiracy, and thus the defendant’s assent can be inferred from acts which furthered the conspiracy’s purpose.” *United States v. Miller*, 693 F.2d 1051, 1053 (11th Cir. 1982) (citation modified). So, even though messages like “if you not [going to] do nothing we want our money back” and “I’m the one who paid for your dog I want progress or my money” used vague and indirect language, the jury could reasonably have concluded, in the context of the other evidence, that Owen was referring to the sisters’ shared goal of killing Mena. And, as explained above, the government offered other evidence tying Owen to the murder-for-hire conspiracy.

3. The Firearm-Transfer Count

The crime of knowingly transferring a firearm to be used to commit a felony has two elements. The government must show that the defendant (1) “receive[d] or transfer[red] a firearm or ammunition, or attempt[ed] or conspire[d] to do so,” and (2) “kn[ew] or ha[d] reasonable cause to believe” that it would be “used to commit a felony.” *See* 18 U.S.C. § 924(h).

Murphy testified that after the sisters’ first plan to kill Mena by heroin overdose didn’t succeed, they hatched “another plan” and “told [her] to use the money that they [gave her] for the drugs . . . and get money back and go get a gun.” When Murphy told the sisters she didn’t know where to find a gun, Smith gave her one. When that plan fell through, Owen hounded Murphy, telling

Murphy she “wanted some production for her money” and demanded Murphy “get off [her] lazy a-- and do what [Owen] paid [her] to do”—that is, to kill Mena with the gun. Thus, Owen not only believed that the gun Smith gave would be used to commit the felony of murder, but she also affirmatively planned for and instructed Murphy to commit it.

Owen responds that there was no evidence that she “knew anything about the gun that [Smith] gave to Murphy, nor that it was anyone other than Smith who actually gave the gun to Murphy.” But Owen didn’t have to commit the transfer offense herself to be punishable as a principal. One who “aids, abets, counsels, commands, induces or procures” an offense is guilty, too. 18 U.S.C. § 2.

“Aiding and abetting need not be specifically alleged in the indictment; assuming the evidence supports it, the accused can be convicted of aiding and abetting so long as the jury is instructed on it”—as the jury was here. *United States v. Seabrooks*, 839 F.3d 1326, 1333 (11th Cir. 2016) (quoting *United States v. Martin*, 747 F.2d 1404, 1407 (11th Cir. 1984)). “[P]articipation in the form of ‘words, acts, encouragement, support, or presence’ will suffice” to support a conviction under a theory of aiding and abetting. *United States v. Coats*, 8 F.4th 1228, 1248 (11th Cir. 2021) (quoting *Rosemond v. United States*, 572 U.S. 65, 73 (2014)). Crediting Murphy’s testimony that Owen, Smith, and Grimes had told her to procure a gun to shoot Mena and that Owen told Murphy to “do what [Owen] paid [her] to do,” the jury could reasonably have inferred that

Owen aided and abetted Smith's transfer of the firearm to Murphy through "words," "encouragement," and "support." *See id.*

B. *Motion for Mistrial*

Finally, Owen contends that the district court abused its discretion by denying her motion for a mistrial because the special agent's testimony improperly commented on her post-arrest silence to impeach her at trial. The Fifth Amendment guarantees a criminal defendant's right not to be "compelled . . . to be a witness against himself." U.S. Const. Amend. V. Under *Miranda v. Arizona*, 384 U.S. 436 (1966), the government must inform an arrestee of her right to remain silent following arrest.

The government violates the defendant's right to due process when it informs the defendant of her right to remain silent but then seeks to use the defendant's silence to impeach her at trial. *See Doyle v. Ohio*, 426 U.S. 610, 619–20 (1976). A comment is an impermissible reference to a defendant's post-arrest silence "if either (1) it was the prosecutor's manifest intention to refer to the defendant's silence; or, (2) the remark was of such a character that the jury would naturally and necessarily take it to be a comment" about the defendant's silence. *United States v. Rosenthal*, 793 F.2d 1214, 1243 (11th Cir. 1986) (citation modified); *see also Williams v. Wainwright*, 673 F.2d 1182, 1185 (11th Cir. 1982) (emphasizing that the test is not whether "the jury possibly or even probably would view the challenged remark" as referencing the defendant's failure to testify; it must "necessarily" have done so).

25-11657

Opinion of the Court

15

On appeal, Owen argues that the jury would “naturally and necessarily” understand the second agent’s testimony as a comment on her post-arrest silence. But, as the district court explained, the second agent’s response simply indicated that she had spoken to all of the potential witnesses in the case, not that Owen had invoked or exercised her right to silence or failed to testify at her trial. Nor did the second agent name Owen or otherwise draw the jury’s attention to her. In short, we don’t see any way the jury would have “naturally and necessarily” understood the special agent’s testimony as a comment on Owen’s exercise of her right to silence or her failure to testify. *See Rosenthal*, 793 F.2d at 1243. Indeed, we’ve held statements more closely connected to a defendant’s lack of testimony than this one were not improper comments on silence. *See, e.g., United States v. Knowles*, 66 F.3d 1146, 1162–63 (11th Cir. 1995) (finding no comment about failure to testify where the government asked the jury whether it “ever hear[d] an explanation for” why the defendant was living under a false name); *United States v. Griggs*, 735 F.2d 1318, 1324 (11th Cir. 1984) (“readily uphold[ing]” prosecutor’s remark in his closing argument at a counterfeiting trial that “[o]nly [the defendant],” who hadn’t testified at the trial, knew “where he got the bills”). So, we cannot say that the district court abused its discretion here by not granting a mistrial based on the special agent’s comment.

AFFIRMED.