No. 13-_____

In The

Supreme Court of the United States

ENID EDWARDS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

ALVIN E. ENTIN, ESQ.
Counsel of Record
RICHARD DELLA FERA, ESQ.
ENTIN & DELLA FERA, P.A.
110 S.E. 6th Street, #1970
Fort Lauderdale, FL 33301
(T): (954) 761-7201
aentin@hotmail.com

Attorneys for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

The *Confrontation Clause of the Sixth Amendment*, "guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him." *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986).

The federal appellate courts are split 3-5 on the question of whether the *Confrontation Clause* guarantees a defendant the right to inquire into the specific benefits and sentence reductions a cooperating witness received in exchange for cooperating. The Third, Fifth and Ninth Circuits hold that a defendant's *Confrontation Clause* right to inquire into potential sentencing ranges, minimums or maximums, outweighs any potential risk of undue prejudice towards the prosecution. Contrary to this position, the First, Second, Fourth, Seventh and Eighth Circuits have all held that the *Confrontation Clause* is not violated when a judge curtails inquiry into the exact details of a plea agreement between a prosecutor and a co-conspiring witness. Here, the Third Circuit below deviated from the minority position and upheld the District Court's policy that punishment is something it "never ever puts in front of the jury." As such, the question presented is:

Whether a defendant's *Confrontation Clause* rights are violated when the district court bars the defendant from cross-examining a cooperating witness about the exact details regarding the sentence they avoided by agreeing to testify.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

STATUTES

CONSTITUTIONAL PROVISIONS

SECONDARY AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Enid Edwards respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

INTRODUCTION

The issue submitted in the instant petition, concerns a fundamental question regarding the contours and boundaries of the Sixth Amendment's *Confrontation Clause*. Specifically, Petitioner requests this Court reverse the decision of the Third Circuit Court of Appeals below and establish a bright-line rule, solidifying the right of an accused to confront a cooperating witness regarding the specific details of the benefits the witness received in exchange for testifying. Here, the Third Circuit erred by upholding the District Court's decision forbidding Petitioner from inquiring into the specific sentencing ranges, maximums and minimums the cooperating witnesses could have received absent cooperation. The District Court in prohibiting this line of questioning, did not utilize discretion but merely enforced the Court's arbitrary policy of prohibiting all such inquiry at all times. Such a ruling is contrary to the holdings of the Third, Fifth and Ninth Circuits and public policy as it fails to consider the probative value of understanding a witness' incentive to lie.

In addition, the instant Petition further merits consideration by this Court as a disagreement remains

between the circuit courts over whether a *Confrontation Clause* violation occurs when a district court curtails some, but not all, of the inquiry into the details of the plea bargain between the co-conspiring witness and the government. There is a split of authority over whether a defendant's *Confrontation Clause* rights are violated when the district court bars the defendant from cross examining a co-conspirator witness about the exact details regarding the sentence they avoided by agreeing to testify. The circuits who oppose and curtail such inquiry are concerned that such cross-examination would alert the jury to the mandatory minimum sentences faced by the defendant. Presumably the jurors would assume the defendant faces the same potentially harsh sentence as the co-operating witness in the absence of cooperation and thus nullify the prosecution of the defendant.

In contrast, the Third Circuit, Fifth Circuit and the Ninth Circuit all hold that the probative value of understanding a witness' incentive to lie outweighs the prejudicial harm of the possibility of jury nullifications. These Circuits believe that the jury needs to receive the exact details of the cooperating witness' plea agreement to fully appreciate the witness' incentives to lie based on the magnitude of the sentencing reduction. However, these circuits have also implied that their holdings should be read narrowly. As such, a bright-line rule is needed to determine whether the *Confrontation Clause* entitles a defendant to inquire into the "concrete terms" of the cooperating witness'

agreement with the government. Such a rule is particularly necessary as the amount of plea deals rise in response to shrinking judicial budgets. A bright-line rule will lead to more efficient use of judicial resources as it will provide certainty to courts and allow prosecutors a better opportunity to assess their plea agreements.

At the heart of the *Confrontation Clause* is the right to expose a witness' motivation for testifying. *Greene v. McElroy*, 360 U.S. 474, 496 (1959). This right is especially fundamental when a co-conspirator of the defendant agrees to testify against the defendant in exchange for a reduced sentence of his or her own. As a result, this Court should hold that a judge violates the Sixth Amendment by barring the defense from questioning the cooperating witness about the details of his or her plea agreement with the government. The possibility of jury nullification does not outweigh the probative value of understanding the witness' incentive to lie especially where the judge can minimize the potential for jury nullification without compromising the defendant's *Confrontation Clause* right. Thus this Court should grant the instant Petition and reverse the decision below.

OPINION BELOW

The decision of the United States Court of Appeals for the Third Circuit is unreported and is reproduced in the appendix at App. 1.

JURISDICTION

The court of appeals entered its judgment on February 19, 2014. App. 53. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to . . . [b]e confronted with the witnesses against him. . . ."

STATEMENT OF THE CASE

On September 2, 2010, a Grand Jury returned a fifty-four (54) count superseding indictment against Petitioner Enid Edwards and her co-defendants, Officer Francis Brooks and Officer Bill John-Baptiste. The Government accused Petitioner, a Virgin Islands Police Officer, of acting in concert with Brooks and John-Baptiste in conducting a range of criminal activities including extortion, drug possession, drug trafficking and structuring of financial transactions. The trial in the instant matter commenced in the

United States District Court of the Virgin Islands on January 3, 2011 and the jury returned its verdict on January 14, 2011.

At trial, Petitioner sought to cross examine Kelvin Moses, Troy Willocks and John Lindquist to elicit information relating to any deals each made with the government in exchange for their cooperation. With regards to Kelvin Moses, the first co-witness, Petitioner sought to elicit testimony regarding what Moses "hoped" to gain by testifying. App. 76. Specifically, Petitioner asked Moses if he was facing a ten (10) year mandatory minimum prison sentence and up to a maximum prison sentence of life. App. 77. In response, the District Court stopped the testimony and specifically stated "You know that punishment is something that we ***never ever*** put in front of the jury." App. 77 (emphasis added). The District Court then reiterated "You are not to think about punishment at all." App. 77.

Petitioner timely objected to the District Court's ruling. App. 78. Moving forward, the District Court prohibited Petitioner from inquiring into any of the specific ranges, minimums or maximums that these witnesses would have faced had they not testified on behalf of the Government. In addition, Petitioner could not inquire into the magnitude of the sentencing reductions these witnesses received or the witnesses' subjective beliefs as to the sentences they hoped to avoid. At the time of the trial, all of the

cooperating witnesses[1] were facing charges which had substantial mandatory minimum sentences. Specifically, Lindquist, was charged with violating 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(iii), a charge which carries a mandatory minimum sentence of ten (10) years, a maximum sentence of life imprisonment, and a fine of up to $4,000,000. (Plea Agreement of John Lindquist). Ultimately Lindquist received a sentence of only fifteen (15) months imprisonment, five (5) years supervised release and no fine for his cooperation at Petitioner's trial. (Judgment of John Lindquist). However, the District Court absolutely barred Petitioner from cross examining Lindquist on the potential for this sentence reduction and how a reduction of such magnitude contributed to Lindquist's bias and testimony.

After deliberations, the jury found Petitioner guilty on Counts 1, 3, 4, 5, 6, 10, 11, 12, 25, 29, 30, 31, 39, 40, 41, 43, 44, 45, 46, 53, and 54. Petitioner was found not guilty on Count 27. Petitioner then timely filed a Motion for Judgment of Acquittal and a Motion for New Trial. On May 2, 2012, the District Court granted Petitioner's Motion for Judgment of Acquittal as to Counts 5, 6, 10, 11, 12 and 46. Petitioner was sentenced on June 21, 2012.

---

[1] The indictments of Kelvin Moses and Troy Willocks are currently under seal. However, a review of Kelvin Moses' Pacer docket for case no. 3:2006-cr-00080 reveals he was only sentenced to 27 months and supervised release for five (5) years for his cooperation as a witness.

On July 2, 2012, Petitioner timely filed a notice of appeal to the Third Circuit Court of Appeals. There, the Third Circuit rejected Petitioner's contention that her *Confrontation Clause* rights were violated. App. 46. Specifically, the Third Circuit concluded that Petitioner had no right to inquire into the specific sentences that could have been imposed if the witness had refused to cooperate. App. 45. As such the Third Circuit then affirmed the District Court's judgment as to each defendant (App. 54) and reversed the District Court's ruling acquitting Edwards of counts 5, 6, 10, 11, 12 and 46. Petitioner's sentence was then vacated and remanded with directions that the District Court reinstate the jury's verdict of conviction and proceed to resentencing.

REASONS FOR GRANTING THE WRIT

I. The Third Circuit's Decision Is Wrong.

In the instant case, the Third Circuit departed substantially from prior precedent and previous decisions of this Court by upholding the District Court's broad policy of never permitting inquiry into the specifics of a cooperating witness' plea agreement. Here, the District Court erred by not utilizing discretion to assess the probative value of potentially exposing each cooperating witness' incentive to lie with the potential harm of jury nullification. Instead, the District Court enforced a blanket rule that

categorically prohibited all such inquiry and denied Petitioner's *Confrontation Clause* right to an effective cross-examination of the cooperating witnesses.

The Sixth Amendment *Confrontation Clause* "guarantees the right of an accused in a criminal prosecution to be confronted with the witnesses against him." *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986). This right encompasses the right to an effective cross-examination as cross-examination is the "principal means" by which to test the truth of a witness' testimony. *Davis v. Alaska*, 415 U.S. 308, 318 (1974). As such, the Supreme Court has emphasized a policy favoring expansive witness cross-examination in criminal trials. *Id.* at 316.

Furthermore, the exposure of a witness' motivation in testifying is a "proper and important function of the constitutionally protected right of cross examination." *Id.* Specifically the constitutional right to cross examine is

> "[s]ubject always to the broad discretion of a trial judge to preclude repetitive and unduly harassing interrogation, but that limitation cannot preclude a defendant from asking, not only *whether* the witness was biased but also to make a record from which to argue *why* the witness might have been biased."

United States v. Schoneberg, 396 F.3d 1036, 1042 (9th Cir. 2005) (quoting *Davis*, 415 U.S. at 318). While a District Court has wide latitude to impose reasonable limits on cross-examination this power is not without

boundaries as any such limitation is reviewed for abuse of discretion. *United States v. Mussare*, 405 F.3d 161, 169 (3d Cir. 2005). Thus, a defendant's constitutional right is violated when the witness "shows that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Van Arsdall*, 475 U.S. at 680.

Both the Third, Fifth and Ninth Circuits prohibit blanket policies that restrict cross-examination beyond the cooperating witness' mere acknowledgment that the Government would move for a lesser sentence in exchange for testifying. In *United States v. Chandler*, 326 F.3d 210, 222 (3d Cir. 2003),[2] a witness testified that he expected the government to move for a reduced sentence in exchange for his testimony. There, one government witness faced a minimum 97-month sentence under the Sentencing Guidelines, but received only one (1) month of house arrest in exchange for his guilty plea and testimony. *Id.* at 222. At trial, the jury only heard that the first witness: 1) pleaded guilty to an offense with a twelve- to eighteen-month Guidelines sentence range; 2) that he could have been charged with a greater offense; and 3) that he received one month of house arrest and probation. *Id.* The other witness faced a Guideline minimum sentence of twelve (12) years and was only

[2] In *United States v. Larson*, 495 F.3d 1094, 1106 (9th Cir. 2007), the Ninth Circuit described the holding and reasoning in *Chandler*, 326 F.3d at 210 as "instructive."

allowed to testify that she expected the Government to move for a reduced sentence in exchange for her cooperation. *Id.* The district court sustained all of the Government's objections to any of the defense's cross-examination questions regarding the penalties the witnesses faced in the absence of cooperation. *Id.*

On appeal, the Third Circuit held that the district court violated the defendant's *Confrontation Clause* rights because the defendant was not able to effectively expose the witness' potential biases and motivations for testifying. First, the Third Circuit concluded that a reasonable jury would have reached a significantly different impression of the witness' credibility had it been apprised of the enormous magnitude of their stake in testifying against the defendant. *Id.* at 222. Although the jury was aware of the witness' incentive to lie, prohibiting inquiry into the *magnitude* of those incentives was beyond the "reasonable limits" a district court could impose on cross-examination. *Id.* at 222-223. Thus the defendant's *Confrontation Clause* right outweighed any concern of jury nullification. *Id.* Lastly, the Third Circuit then considered whether the conviction should be affirmed pursuant to the harmless error doctrine. *Id.* at 224. In response the Third Circuit held the defendant's sentence should be vacated because the error was not harmless. *Id.*

Following the decision in *Chandler*, the Third Circuit applied a similar analysis to decide *United States v. Throckmorton*, 269 Fed. Appx. 233, 236 (3d Cir. 2008). In *Throckmorton*, the cooperating witness

merely acknowledged that he believed he would be offered leniency in exchange for testifying. *Id.* The district court prohibited the cooperating witness from providing the jury with any estimate of the punishment he would have otherwise faced. *Id.*

On appeal the Third Circuit held that the district court's ruling "deprived the jury of any frame of reference to evaluate the [witness's] motive to cooperate." *Id.* There the jury could not learn of the magnitude of the sentencing reduction. *Id.* Consequently, the Third Circuit then decided whether the constraint was a "reasonable limit" the district court was authorized to impose by balancing the risk of prejudice to Throckmorton against the risk of jury nullification. *Id.* In response the Third Circuit followed *Chandler* and held that any interest in preventing nullification must "yield to the defendant's constitutional right to probe the possible bias, prejudices, or ulterior motives of the witnesses against them." *Id.* As such, the Third Circuit determined that the district court abused its discretion when it barred the defendant from inquiring as to the specific length of prison time that the cooperating witness would have faced absent cooperation. *Id.* at 237.

In *United States v. Landerman*, 109 F.3d 1053, 1063 (5th Cir. 1997), the Fifth Circuit held that the district court erred when it precluded the defendant from exploring the effect of a cooperating witness' potentially serious sentence on his motivation for testifying. There, the district court prohibited the defendants from questioning the cooperating witness

regarding his pending felony charge in state court and any effect it might have on his motivation to testify in the instant proceeding. *Id.* at 1061. In addition, the Government asserted that the pending state charge was not a final conviction that could be used to attack the cooperating witness' credibility. *Id.*

At trial, the witness testified that the plea agreement provided that at sentencing, the Government would move to dismiss the cooperating witness' 15 remaining counts in the indictment. *Id.* The agreement further provided that the Government could seek a substantial assistance reduction in the witness' sentence under § 5K. *Id.* at 1062. Defense counsel then tendered cross-examination questions regarding the pending state charge, however the district court only allowed the witness to answer those questions outside the presence of the jury. *Id.* During this examination the cooperating witness admitted that the pending state charge carried a potential life sentence. *Id.* Back in front of the jury, the defense counsel tried to illicit the specifics of the benefits received through dismissal of the state charge and how this would affect the witness' potential bias. *Id.* However, the district court prohibited all such inquiry. *Id.*

In reversing the district court's decision, the Fifth Circuit noted that the testimony was critical to the prosecution's case and that the witness' pending charge carried a life sentence. *Id.* at 1063. There, the court held, the jury should have been aware the

charge carried a potential life sentence and how it might affect the witness' motivation to testify. *Id.* (citing *United States v. Cooks*, 52 F.3d 101, 104 (5th Cir. 1995) (jury should have been apprised of witness' pending Texas and Louisiana charges which carried possible 99-year and 40-year sentences respectively)). Thus, as the witness' testimony was crucial to the prosecution's case the Fifth Circuit determined the district court's error was not harmless and that the decision should be vacated. *Id.*[3]

In *United States v. Larson*, 495 F.3d 1094, 1108 (9th Cir. 2007), the Ninth Circuit, sitting en banc, found that the district court violated the defendants' *Confrontation Clause* rights by barring the defendant from questioning their co-conspiring witnesses about the mandatory minimum sentences the witnesses would have received had they not testified. *Id.* There, the district court refused to allow defense counsel to cross examine one of the witnesses about the sentence he would have faced absent cooperation, because the court noted that the sentencing of a defendant was up to the court to decide. *Id.* at 1104. Presumably the district court feared the jury would nullify if it understood how much time the witness faced because they would be able to deduce how much time the defendants faced.

---

[3] The Fifth Circuit also cited to *United States v. Hall*, 653 F.2d 1002, 1008 (5th Cir. 1981), for the proposition that "Counsel should be allowed great latitude in cross examining a witness regarding his motivation to testify." *Id.* at 1063.

In making their evaluation the Ninth Circuit considered three factors: (1) whether the excluded evidence was relevant; (2) whether there were other legitimate interests outweighing the defendant's interest in presenting the evidence and (3) whether the exclusion of evidence left the jury with sufficient information to assess the credibility of the witness. *Id.* at 1103. There the Ninth Circuit took into account the fact that the cooperating witness was facing a mandatory minimum life sentence. However, the Ninth Circuit did not base its holding on this sole fact and instead cited to *Chandler* for the proposition that the jury must understand the magnitude of the benefit received. *Id.* at 1107. Ultimately, the Ninth Circuit held that the defendants' *Confrontation Clause* rights were violated as the jury was not able to learn of the magnitude of the benefits the witness received in exchange for testifying. *Id.* at 1105. Citing to intra circuit precedent, the Ninth Circuit concluded that where a plea agreement benefits a witness as a result of their testimony, the defendant must be able to cross examine the witness to show the jury what benefit will flow and why the witness might testify falsely to gain the benefit. *Id.* (citing *Schoneberg*, 396 F.3d at 1042).

Applying the above rationales to the instant case, it is clear that the Third Circuit decided the instant case in a way that clearly conflicts with the decisions of other Federal Circuit Courts of Appeals. During Petitioner's cross-examination of a cooperating witness, the District Court enforced a blanket policy that

categorically denied any inquiry into the magnitude of the benefits the witness received or hoped to receive. As stated above, in enforcing this policy the District Court stated: "You know that punishment is something that we ***never ever*** put in front of the jury." App. 77 (emphasis added), "you are not to think about punishment ***at all***." App. 77 (emphasis added). By stating the District Court "never ever" allows such inquiry, the District Court abused its discretion by refusing to balance the probative value of such testimony against any potential harm of jury nullification. Here, Petitioner's *Confrontation Clause* rights were violated as Petitioner could not establish the true potential extent of the cooperating witnesses' incentive to lie.

In addition, the District Court further exercised erroneous judgment by prohibiting inquiry into the specifics of the sentencing reduction because the witness had not been sentenced. Specifically, the District Court stated: "I'm not going to allow you to get into life, 10 years, 20 years, whatever it is, because you don't know, he doesn't know, and this is not something the jury needs to be concerned with." App. 81. Here, the District Court interpreted the law incorrectly as the District Court should not draw a distinction between an un-sentenced and sentenced witness[4] in evaluating the testimony. Such

[4] In making their determination the Ninth Circuit also stated that the fact that the cooperating witness had not yet been sentenced was of no consequence to their decision. *Larson*,

(Continued on following page)

a distinction is especially invalid, where, as here, the witnesses were facing substantial and guaranteed mandatory minimum sentences.

As stated above, Lindquist, was charged with violating 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(iii), a charge which carries a mandatory minimum sentence of ten (10) years, a maximum sentence of life imprisonment, and a fine of up to $4,000,000. App. 55-56. However, Lindquist only received a sentence of fifteen (15) months imprisonment, five (5) years supervised release and no fine for his cooperation at Petitioner's trial. App. 66. Pursuant to the rationales in *Chandler, Throckmorton, Landerman* and *Larson*, the magnitude of such a potential benefit is crucial for the jury to understand. Here, the testimonies of Kelvin Moses, Troy Willocks and John Lindquist were essential to the Government's case.[5] Outside of their testimony, the Government presented little evidence to convict Petitioner on the narcotics related charges. In addition, the cooperating witnesses were not co-conspirator witnesses, thus severely mitigating any potential threat of jury nullification. As such, the

---

495 F.3d at 1107, n. 14; *see also Landerman*, 109 F.3d at 1062 (jury should have been allowed to determine effect of witness' pending criminal charge on motivation to testify).

[5] The right to cross-examination "is particularly important when the witness is critical to the prosecution's case." *United States v. Mizell*, 88 F.3d 288 (5th Cir.), *cert. denied*, 117 S. Ct. 620 (1996).

limitation on Petitioner's cross-examination was harmful error.

As illustrated by substantial precedent, the "reasonable limits" upon which a District Court can curtail cross-examination does not extend to prohibit inquiry into the magnitude of the benefits the cooperating witness received or hoped to receive. Here, the District Court did not engage in any balancing test as mandated by case law. Rather, the District Court enforced an arbitrary blanket prohibition, which categorically denied any inquiry into the specifics of the witness' sentencing ranges, minimums or maximums. Such a policy completely ignores the probative value of such testimony and directly contradicts this Court's decisions supporting expansive cross-examination. Accordingly, this Court should grant the instant Petition and reverse the decision of the Third Circuit.

II. The Federal Courts Of Appeals Are Split 3-5 Over The Instant Question Presented.

The Federal Courts of Appeals have split on the issue over whether a defendant's *Confrontation Clause* rights are violated by limitations on cross-examination that prohibit a defendant from asking cooperating witnesses about specific sentence ranges, minimums, or maximums that a defendant avoided or hoped to avoid by cooperating. As illustrated above, the Third, Fifth and Ninth Circuits have held that a district court abuses its discretion by limiting a

defendant's ability to cross examine cooperating witnesses regarding their beliefs as to the sentences they avoided by testifying. Specifically, these courts hold that a defendant's *Confrontation Clause* right to inquire into potential sentencing ranges, minimums or maximums, outweighs any potential risk of undue prejudice towards the prosecution.

Contrary to the Third, Fifth and Ninth Circuits, the First, Second, Fourth, Seventh, and Eighth Circuits have all held that the *Confrontation Clause* is not violated when a judge curtails inquiry into the exact details of a plea agreement between a prosecutor and a co-conspiring witness. These circuits contend that the defendant is able to expose the cooperating witness' incentives to lie without the disclosure of the mandatory minimum sentences they would have received absent cooperation. Furthermore, these circuits also believe that avoidance of jury nullification is a valid reason to curtail cross-examination into the specifics of the potential sentencing reduction or benefits.

The First Circuit has held that the *Confrontation Clause* is satisfied if the defendant had an opportunity to ask the cooperating witness if they had received or hoped to receive a sentencing benefit from the Government in exchange for their testimony. *United States v. Luciano-Mosquera*, 63 F.3d 1142, 1153 (1st Cir. 1995). There, the defendant argued that his *Confrontation Clause* rights were violated when the district court prohibited cross-examination into the exact penalties that the co-conspirator witness would

have faced absent cooperation. *Id.* However, the First Circuit found that the probative value of the precise number of years was outweighed by the potential for prejudice. *Id.* As such, the First Circuit worried that the jury would be prejudiced if it learned how many years the co-conspirator witness would have faced as the jury could infer that the defendant would face the same sentence. *Id.*

The Second Circuit has held that the *Confrontation Clause* was not violated when a district court barred cross-examination regarding specific penalties a cooperating witness would have faced absent government cooperation. *United States v. Reid*, 300 Fed. Appx. 50, 51 (2d Cir. 2008). In its holding, the Second Circuit noted that the trial court did not want to expose the jury to potentially prejudicial information regarding the specifics of the witness' sentencing reduction. *Id.* However, the Second Circuit did not specify why such testimony would be prejudicial to the jury. The decision ultimately offered very little analysis but cited the First Circuit's decision in *Luciano-Mosquera* approvingly. *Id.* at 52.

The Fourth Circuit upheld a guilty conviction where the district court limited the defendant's ability to cross examine government witnesses regarding their incentives to lie in exchange for sentencing reductions. *United States v. Cropp*, 127 F.3d 354 (4th Cir. 1997). In this case, the district court permitted the defense to ask co-conspiring witnesses whether they had signed plea agreements, whether they had faced a severe penalty prior to cooperating,

and whether they had expected to receive lesser sentences as a result of their plea agreements. *Id.* at 358. However, the defense was not permitted to ask questions about the specific penalties the witnesses would have faced absent government cooperation or the benefits they hoped to receive due to their cooperation. *Id.* Specifically, the court stated that the risk of jury nullification was too great and that asking the witnesses about the sentences they expected to receive would undermine the court's discretion to decide those sentences. *Id.* The Fourth Circuit ultimately sided with the First Circuit in *Luciano-Mosquera* in noting that any probative value from the jury's knowledge of the sentence faced absent cooperation was slight in contrast to its potential prejudicial impact. *Id.* at 359.

The Seventh Circuit upheld cross-examination restrictions regarding the details of sentences co-conspiring witnesses would have received absent cooperation with the government. *United States v. Arocho*, 305 F.3d 627, 636 (7th Cir. 2002). At trial, the Appellants attempted to cross examine the cooperating witnesses about the details concerning the specific sentences and sentencing guideline ranges they faced. *Id.* However, the district court barred the appellants from engaging in such inquiry. On appeal, the Seventh Circuit held that the district court did not abuse its discretion because the jury learned that the witnesses expected to receive substantial benefits for their testimony. *Id.* In their reasoning, the Seventh Circuit emphasized the importance of the

district court's jury instruction, which emphasized that the jury should consider the witness' testimony carefully as they expected to receive benefits in exchange for testifying. *Id.* Furthermore, the Seventh Circuit then determined that the potential for jury nullification outweighed any benefit that the jury would receive by understanding the specific benefits. *Id.*

In *United States v. Walley*, 567 F.3d 354, 360 (8th Cir. 2009), the Eighth Circuit expressly conflicted with the decisions of the Third, Fifth and Ninth Circuits regarding the admissibility of specific mandatory minimums. There, the Eighth Circuit rejected the appellant's contention that the minimum sentence is relevant to bias because a witness will have a greater incentive to testify when facing a longer mandatory minimum sentence. *Id.* The court stated it was not persuaded that evidence the cooperating witness was facing a "five year sentence" as opposed to a "substantial" sentence would have given the jury a "significantly different impression." However, the court did state that the defendant should have been able to contrast the original punishment faced by the witness with the more lenient punishment contemplated by the plea agreement. *Id.*

Based on the foregoing, a bright-line rule is needed to determine whether the *Confrontation Clause* provides a defendant with a concrete right to categorically inquire into the specific benefits a cooperating witness received or hoped to receive in exchange for testifying. The majority perspective fails

to acknowledge that the magnitude of the sentence reduction in exchange for testifying has great probative value. The greater the sentencing reduction the more incentive the cooperating witness has to lie. Excluding such information provides the jury with no context to evaluate testimony where the witness alleges they received a "considerable" or "substantial" benefit from the government. A juror with considerably less legal expertise than a judge will generally not be able to assess the meaning of "substantial" or "considerable" in the sentencing context without further information. Here, the Circuits comprising the majority do not offer any guidance as to how jurors should process the general information that the witness entered into a plea agreement with the Government. The Circuits provide no reasons why jury nullification is considered harmful or explain why jury nullification is more likely to occur where the court permits inquiry into the specifics of the witness' plea agreement.

Furthermore, resolution of this circuit split through a bright-line rule will lead to more efficient use of judicial resources. In the United States, approximately 90% of criminal cases are resolved by guilty pleas. *See* Mongrain, Steeve & Roberts, Joanne, *Plea Bargaining With Budgetary Constraints*, International Review of Law and Economics, Elsevier, vol. 29(1), pages 8-12, March 2009. As judicial and prosecutorial budgets continue to strain, use of plea agreements will continue to rise as an inexpensive and efficient way to resolve criminal prosecutions. *Id.*

Thus, a bright-line rule on this issue would give certainty to courts, reducing the deliberation times of judges and allow prosecutors to better value their plea deals.

CONCLUSION

This Court should grant the instant Petition as the Third Circuit erred by sanctioning the District Court's categorical prohibition of inquiry into the specifics or magnitude of any benefits received in exchange for testifying. Here, the Third Circuit violated Petitioner's *Confrontation Clause* right by not allowing the jury to assess the magnitude of the cooperating witness' sentencing reductions and thus their incentive to lie. By "***never ever***" allowing such inquiry, the District Court abused its discretion by refusing to evaluate the probative value of such evidence against its prejudicial impact. As the testimony of these cooperating witnesses formed the bulk of the Government's evidence regarding the narcotics charges, prohibition of such inquiry was harmful and thus warrants reversal.

Furthermore, the split of authority on this issue warrants resolution through a bright-line rule. The majority circuits who oppose specific inquiry into sentencing reductions do not provide solutions as to how the jury should evaluate general information regarding the plea agreement. Such guidance from

this Court is necessary as the use of plea agreements will only increase further as judicial budgets shrink.

Accordingly, Petitioner respectfully requests that this Court grant the instant Petition and reverse the decision of the Third Circuit below.

Respectfully submitted,

ALVIN E. ENTIN, ESQ.
Counsel of Record
RICHARD DELLA FERA, ESQ.
ENTIN & DELLA FERA, P.A.
110 S.E. 6th Street, #1970
Fort Lauderdale, FL 33301
(T): (954) 761-7201
aentin@hotmail.com

Attorneys for Petitioner

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 12-2301, 12-2354, 12-2675, 12-2875

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant

v.

BILL JOHN-BAPTISTE,
FRANCIS BROOKS, & ENID EDWARDS,

Appellants/Cross-Appellees.

Appeal from the District Court
for the District of the Virgin Islands (D.V.I.)
(D.V.I. Criminal Action Nos. 3-10-cr-00036-001,
3-10-cr-00036-002 & 3-10-cr-00036-004)
District Judge: Honorable Curtis V . Gomez

Argued: April 24, 2013

Before: McKEE, *Chief Judge*
and SCIRICA, VANASKIE, *Circuit Judges*

(Opinion filed: February 19, 2014)

Sonja Ralston, (argued)
United States Department of Justice
Appellate Section, Criminal Division,
Room 1264

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Counsel for Appellee/Cross-Appellant.

Donnie M. King, (argued),
1212 Bjerge Gade
Charlotte Amalie
St. Thomas, USVI 00802-000

George H. Hodge, Jr., (argued),
P.O. Box 803
Charlotte Amalie
St. Thomas, USVI 00804-000

Allison B. Duffie, (argued),
Entin & Della Fera,
110 Southeast Sixth Street
Suite 1970
Fort Lauderdale, FL 33301

Counsel for Appellants/Cross-Appellees.

OPINION OF THE COURT

McKEE, *Chief Judge*.

In this consolidated appeal, Francis Brooks, Enid Edwards, and Bill John-Baptiste challenge their convictions following trial before the District Court. All convictions stemmed from the defendants' alleged extortion, kidnapping, bribes, and drug trafficking while each served as law enforcement officers. Brooks and Edwards were employed with the Virgin Islands Police Department ("VIPD"), and John-Baptiste was employed by the Virgin Islands Port Authority

("VIPA"). Defendants challenge their convictions on various constitutional and evidentiary grounds. In addition, the government cross-appeals the District Court's judgment of acquittal on certain counts. For the reasons that follow, we will reverse the District Court's judgment of acquittal as to counts 5, 6, 10, 11, 12, and 46, and affirm the judgment of the District Court with respect to all other counts.

I. Background

This case presents a sordid picture of "law enforcement officers" who sought to enrich themselves rather than protect the public by engaging in a protracted pattern of criminality that included extortion, drug dealing and kidnapping, all at the expense of the residents of the United States Virgin Islands.

In September 2010, a federal grand jury issued a 53-count superseding indictment against the defendants, and the case proceeded to trial. At trial, the prosecution introduced the following evidence as to particular charges in the superseding indictment.

A. Evidence of Specific Crimes

1. Brooks and Edwards Distribute Six Pounds of Marijuana for Resale. (Counts 2 to 4)

Kelvin Moses testified that in 2005, Brooks and Edwards approached him in their police cruiser and sold him six pounds of marijuana for him to resell.

Joint App. 643-46. Moses also testified that prior to this exchange, from 2000 to 2003 and from 2005 to 2007, he routinely paid money to Brooks and Edwards for information regarding other people who were cooperating with them.

2. Brooks and Edwards Impound a Truck and Extort Payment From The Owner. (Counts 5 to 12)

Kenneth Love testified that in 2007, Brooks and Edwards illegally impounded his truck. Edwards told Love that he would have to pay $1,200 to get his truck back, and further informed him that she had been "taking money . . . from people" for 19 years. Joint App. 572-73. Love also testified that Brooks and Edwards eventually arranged for him to pay approximately $825 in cash to release the truck. Joint App. 603-04.

3. Brooks, Edwards and John-Baptiste Arrest a Taxi Driver and Hold Her in Custody Until her Boyfriend Pays for her Release. (Counts 24 to 33)

In April 2008, John-Baptiste arrested taxi driver, Yvese Calixte, for a parking violation. John-Baptiste proceeded to forcibly detain Calixte until VIPD officers arrived, handcuffed her, and placed her in a police car. John-Baptiste followed behind as the officers drove Calixte to a VIPD facility, and placed her in a holding cell where she remained for four to five hours.

Joint App. 737-39. Calixte was eventually transferred to a downtown jail, where she was processed for booking. *Id.* at 743. Thereafter, John-Baptiste handcuffed Calixte and drove her to a shipping station, where they were met by Brooks, Edwards, and Calixte's boyfriend, Jossenel Morino. Calixte was finally released, but only after Morino paid $1,000 to Brooks and Edwards in exchange for her freedom.

4. Brooks Extorts Payment from Felon in Possession of a Firearm in Exchange for Not Arresting Him; Edwards and Brooks then Coerce Him into Selling Cocaine for Them (Counts 34 to 38 & 39 to 46)

John Lindquist, a convicted felon, testified that in 2009, Brooks approached him while Lindquist had a gun in his possession. In exchange for not arresting him, Brooks asked Lindquist for $2,000, which Lindquist paid over the course of the next month. Months later, Lindquist encountered Brooks again while carrying another gun. Lindquist testified that Brooks and Edwards gave him 4.5 ounces of crack cocaine to sell for them in exchange for not being arrested. After Lindquist sold the drugs, he paid Brooks $3,500 over the course of the following months.[1]

---

[1] Additionally, the following evidence was admitted for counts that were ultimately dismissed pre-verdict pursuant to defendants' Rule 29 motion for acquittal, *see* Joint Appx. 1311, 2102-2: (1) Elias Deeb, an undocumented Syrian immigrant who

(Continued on following page)

B. Post Trial Motions.

At the close of trial, the jury convicted Brooks and Edwards of: conspiracy under the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d) (RICO); conspiracy and extortion under the Hobbs Act, 18 U.S.C. §§ 1951(a) & (2); conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. § 846; distribution of and possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1); conspiracy, in violation of 14 V.I.C. § 551; extortion, in violation of 14 V.I.C. §§ 701 & 11; solicitation and receipt of a bribe, in violation of 14 V.I.C. §§ 403 & 11; and conflict of interest, in violation of 3 V.I.C. §§ 1102(3) & 1108 and 14 V.I.C. § 11. The jury convicted John-Baptiste of kidnapping and false imprisonment, in violation of 14 V.I.C. §§ 1051 & 11.

Following their convictions, defendants moved for judgments of acquittal pursuant to Rule 29, and for

---

came to the United States in 2004 and was seeking asylum, testified that in 2004 Edwards offered to illegally obtain a driver's license for him. Joint App. 373. Deeb eventually became an informant for the FBI and DEA. Over the course of several meetings, he gave Brooks and Edwards $900 in cash and a CD player in exchange for the license. Joint App. at 394, 409-11, 418 (Counts 13 to 23); (2) A man going by the name of Troy Willock claims that in early 2008, Brooks and Edwards approached him and his friends while they sat outside a local bakery. (As we discuss below, there is a controversy over the identity of the man who actually testified at trial). The officers frisked the men and Brooks removed a Ziploc bag filled with marijuana from inside a man's pocket. However, no one was arrested (Counts 47 to 52).

new trials pursuant to Rule 33 of the Federal Rules of Criminal Procedure. The District Court granted defendants' Rule 29 motions as to counts 5, 6, 7, 10, 11, 12, 35, and 46. Thereafter, the District Court sentenced both Brooks and Edwards to 151 months' imprisonment to be followed by 3 years' supervised release. John-Baptiste was sentenced to 60 months imprisonment. These appeals followed.

II. Discussion

We have jurisdiction to review a district court's final order and sentence under 28 U.S.C. § 1291 and 18 U.S.C. §§ 3731 & 3742.

A. Sufficiency of the Indictment

Prior to trial, Brooks moved to dismiss the indictment because the government failed to identify the victims of each crime by name. According to Brooks, the indictment was invalid because it failed to provide him with sufficient information to prepare a defense, and to plead double jeopardy in case of future prosecution. Brooks renews this claim before us. This presents a legal question over which we have plenary review. *United States v. Kemp*, 500 F.3d 257, 280 (3d Cir. 2007).

The Supreme Court has articulated a two-part test for measuring the sufficiency of an indictment. *Russell v. United States*, 369 U.S. 749, 763-64 (1962). Under this test, an indictment is sufficient when it

(1) "contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet," *id.* at 763, and (2) allows him to "plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hamling v. United States*, 418 U.S. 87, 117 (1974). We have recognized that "[a]n indictment must allege more than just the essential elements of the offense." *United States v. Vitillo*, 490 F.3d 314, 321 (3d Cir. 2007). However, "'[n]o greater specificity than the statutory language is required so long as there is sufficient factual orientation' to permit a defendant to prepare his defense and invoke double jeopardy." *United States v. Huet*, 665 F.3d 588, 595 (3d Cir. 2012) (quoting *United States v. Kemp*, 500 F.3d at 280).

Brooks's argument is wholly grounded upon the second of the above-cited factors. He claims that he cannot assert a double jeopardy claim in the future because the indictment omits the names of the alleged victims. He correctly notes that the indictment only references dates and the nature of the statutory offense charged in each count and does not include the name of any of the alleged victims. For example, Brooks highlights count 25, charging racketeering extortion in violation of 18 U.S.C. §§ 1951(a), 2. That portion of the indictment states:

> On or about April 2, 2008, at St. Thomas in the District of the Virgin Islands, ENID EDWARDS, FRANCIS BROOKS and BILL JOHN-BAPTISTE, while acting under color of official right as law enforcement officers of

> the Virgin Islands, did knowingly and intentionally affect commerce by extortion, and attempted to do so, and aided and abetted the same; namely, by unlawfully *requiring an individual* to pay money in order for the individual to recover a vehicle that had been towed pursuant to police directive authority.

Brooks App. at 36 (emphasis added).

The specificity required for an indictment to have "'sufficient factual orientation' to permit a defendant to prepare his defense and invoke double jeopardy," is not particularly onerous. *Huet*, 665 F.3d at 595 (quoting *United States v. Kemp*, 500 F.3d at 280). We have found that a defendant has sufficient notice to guard against a future prosecution in violation of the protection against double jeopardy if an indictment specifies the time frame for the criminal conduct. *See United States v. Huet*, 665 F.3d at 596 (reversing District Court's order dismissing an indictment where the relevant charge listed all required elements of the offense and where it also "specifie[d] the time period during which the violation occurred" by including the temporal description "on or about August 10, 2007, to on or about January 11, 2008.").

Although this indictment could easily have identified the alleged victims, it adequately specified the period in which the alleged crimes occurred, and set forth enough specificity about the crimes charged to protect against any subsequent attempt to charge Brooks with any crimes arising from the conduct that is the subject of this indictment. Accordingly, we

conclude that the indictment was sufficiently specific to withstand a double jeopardy challenge.[2]

B. John-Baptiste's Motion for Severance.[3]

The jury returned a verdict finding John-Baptiste guilty of a single count (count 27), charging false imprisonment and kidnapping, and acquitted him of all other charges.[4]

John-Baptiste argues that the District Court erred in rejecting his pre-trial requests for severance under either F. R. Crim. P. 8(b) or 14(a). He argues that the government's case against him stemmed

---

[2] For example, the trial evidence identified the specific incident that occurred on April 2, 2008, as charged in count 25, as the extortion of $500 for the release of Calixte and her taxi.

In rejecting the challenge to the specificity of this indictment, we by no means condone the lack of precision that is evident on the face of this indictment. Nothing here suggests a need to withhold the identity of various victims because of any concerns for their safety, and the government has not attempted to defend the manner in which this indictment was drafted by asserting any such concerns. Although the specificity in the indictment is adequate, we would hope that greater care is taken in drafting indictments in the future.

[3] We review the denial of a motion to sever for abuse of discretion. *United States v. Davis*, 397 F.3d 173, 182 (3d Cir. 2005).

[4] Specifically, the jury acquitted John-Baptiste of interfering with interstate commerce (count 25), kidnapping for extortion (count 28), extortion (29), solicitation and receipt of a bribe (count 30), conflict of interest (count 32), aggravated assault and battery (count 32), and unlawful sexual contact (count 33).

solely from the April 2, 2008 incident involving Calixte, and joinder in an indictment containing numerous other charges against other defendants allowed evidence admissible only against Brooks and Edwards to improperly "spillover" and be used against him.

A defendant seeking a new trial due to the denial of a severance motion must show that the joint trial led to "clear and substantial prejudice resulting in a manifestly unfair trial." *United States v. Urban*, 404 F.3d 754, 775 (3d Cir. 2005) (internal quotation marks omitted). "Mere allegations of prejudice are not enough," *United States v. Reicherter*, 647 F.2d 397, 400 (3d Cir. 1981), and defendants are "not entitled to severance merely because they may have a better chance of acquittal in separate trials." *Zafiro v. United States*, 506 U.S. 534, 540 (1993). Thus, as we have previously explained, the critical issue when considering the potential for prejudice "is not whether the evidence against a co-defendant is more damaging but rather whether the jury will be able to 'compartmentalize the evidence as it relates to separate defendants in view of its volume and limited admissibility.'" *Davis*, 397 F.3d at 182 (quoting *United States v. Somers*, 496 F.2d 723, 730 (3d Cir. 1974)).

Here, John-Baptiste cannot establish that the evidence presented against Edwards and Brooks resulted in clear and substantial prejudice to his case. As noted, his sole contention is that the evidence against Edwards and Brooks was so extensive that it prevented the jury from reliably determining *his*

guilt. *See* John-Baptiste Br. at 24. However, severance is not required simply because the evidence against his co-defendants may be stronger than the evidence against John-Baptiste. *See Urban*, 404 F.3d at 776 ("[A] defendant is not entitled to severance merely because the evidence against a co-defendant is more damaging than that against him.") (citation and internal quotation marks omitted); *United States v. Console*, 13 F.3d 641, 655 (3d Cir. 1993) ("Prejudice should not be found in a joint trial just because all evidence adduced is not germane to all counts against each defendant or some evidence adduced is more damaging to one defendant than others."); *see also United States v. Dansker*, 537 F.2d 40, 62 (3d Cir. 1976).

Additionally, nothing suggests that the jury was unable to "compartmentalize the evidence as it relate[d] to separate defendants. . . ." *Davis*, 397 F.3d at 182, nor does John-Baptiste point to any evidence of that happening. We realize that only eight of the 54 counts in this indictment involved John-Baptiste and his involvement in the scheme to kidnap Calixte and hold her for ransom. However, the evidence that was relevant to those charges was easily separated and compartmentalized from testimony that was admitted regarding Edwards's or Brooks's involvement in the other charged offenses. *See*, *e.g.*, *Davis*, 397 F.3d at 182 (rejecting claim of prejudice where "facts [] relatively simple; all events occurred in a single evening; there are only three defendants; and there are no overly technical or scientific issues"). Finally,

in instructing the jury, the District Court underscored that "[e]ach count and the evidence pertaining to it should be considered separately" and that "[t]he case of each defendant should be considered separately and individually." Joint App. 2142-43. Accordingly, we conclude that the jury could have compartmentalized the evidence on each count and each defendant as instructed.

C. The Virgin Islands False Imprisonment and Kidnapping Statute

John-Baptiste also challenges the District Court's interpretation and application of 14 V.I.C. § 1051 (the Virgin Islands false imprisonment and kidnapping statute). He first claims that he District Court erroneously ignored the requirement that a defendant act "without lawful authority" in committing the offense. Second, John-Baptiste argues that the statute is unconstitutionally void for vagueness as interpreted because it provides no notice to law enforcement officers that they can be charged and convicted of kidnapping. The arguments border on frivolity.

14 V.I.C. § 1051 provides in pertinent part:

> Whoever without lawful authority confines or imprisons another person within this Territory against his will, or confines . . . or kidnaps another person, with intent to cause him to be confined or imprisoned in this Territory against his will . . . is guilty of kidnapping and shall be imprisoned for not less than one and not more than 20 years.

14 V.I.C. § 1051. As noted, the jury convicted John-Baptiste of one count of kidnapping for which he received a sentence of five years' imprisonment.

In arguing that the District Court erroneously interpreted "without lawful authority," John-Baptiste claims that, given his authority as a peace officer to make arrests with or without a warrant, any arrest he makes must necessarily be "within lawful authority." The argument is at best, misguided and at most, fanciful. This Virgin Islands statute provides peace officers with *lawful* authority to make arrests in routine circumstances – *e.g.*, when they have witnessed a public offense or when there is reasonable cause to believe that a person has committed a felony. *See* 5 V.I.C. § 3562.[5] No reasonable interpretation of

---

[5] In its entirety, the statute provides:

> A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person –
>
> (1) for a public offense committed or attempted in his presence;
>
> (2) when a person has committed a felony, although not in his presence;
>
> (3) when a felony has in fact been committed and he has reasonable cause for believing the person to have committed it;
>
> (4) on a charge made, upon a reasonable cause, of the commission of a felony by the party; or
>
> (5) at night, when there is reasonable cause to believe that he has committed a felony.

5 V.I.C. § 3562.

the statute would convert it to a license to empower peace officers to act *outside* of this authority or detain someone for a criminal purpose. Indeed, the slightest modicum of common sense would negate the conclusion that the statute allows police officers to engage in criminality merely because they have been authorized to uphold the law. Yet, that is precisely the interpretation that John-Baptiste urges upon us.

Notwithstanding John-Baptiste's argument to the contrary, it is well-settled that law enforcement officers are subject to prosecution under criminal statutes when they act unlawfully or "without legal authority." *See*, *e.g.*, *Hampton v. United States*, 425 U.S. 484, 490 (1976) (plurality opinion) ("If the police engage in illegal activity in concert with a defendant beyond the scope of their duties the remedy lies . . . in prosecuting the police under the applicable provisions of state or federal law."); *see also Imbler v. Pachtman*, 424 U.S. 409, 429 (1976) ("This Court has never suggested that the policy considerations which compel civil immunity for certain government officials also place them beyond the reach of criminal law.").

A recent case decided by the First Circuit Court of Appeals is illustrative. In *United States v. Cortes-Caban*, 691 F.3d 1 (1st Cir. 2012), a divided panel of the First Circuit upheld the conviction of several police officer defendants for drug distribution under 21 U.S.C. § 841. The officers unlawfully transferred marijuana and cocaine to each other and outside parties as part of a conspiracy to plant evidence and conduct illegal searches and seizures. In affirming the

convictions that followed, the majority explained in detail that while Congress had "carved out a specific exemption for distribution of controlled substances by law enforcement officers, but *only* the extent that they are 'lawfully engaged' in the enforcement of drug laws." *See Cortes-Caban*, 691 F.3d at 20 (citing 21 U.S.C. § 885) (emphasis in original).[6] Because the officers in that case acted outside their lawful authority to enforce state and federal drug laws, they were subject to prosecution under federal drug laws the same as anyone else. *Id.* at 20-22.[7]

Similarly, the Virgin Islands "arrest by a peace officer" statute may only be read to grant officers

---

[6] Indeed, a contrary result would have subjected police officers to prosecution for illegal distribution of a controlled substance when they gave an informant a controlled substance to sell as part of a controlled buy or "sting."

[7] The mere fact that the panel in *Cortes-Caban* was not unanimous does not undermine our belief that John-Baptiste's argument that every action of a Virgin Islands police officer is cloaked with legal authority is unreasonable. The issue that divided the panel in *Cartes-Caban* was whether the evidence of a drug "distribution" was sufficient to convict under 21 USC § 841(a)(1) because Congress had specifically authorized some distributions of controlled substances by law enforcement officers.

However, in his dissent, Judge Torruella specifically confirmed that he agreed that the evidence of an illegal distribution of drugs by a police officer was sufficient to convict the defendant of a criminal conspiracy. ("I agree that the record supports the government's allegations . . . that appellants' actions in planting drugs for the purpose of fabricating criminal cases constitutes a violation of 18 USC § 241."). 691 F.3d at 30.

authority to carry out arrests under specific circumstances. It was certainly not intended to immunize police officers from prosecution for such clearly illegal actions as restraining someone's liberty until a ransom is paid. Thus, where, as here, the government can show that a peace officer's conduct exceeded lawful authority to arrest and detain, that officer is subject to prosecution under *any* statute that criminalizes his/her conduct.

John-Baptiste makes an equally tenuous claim that the Virgin Islands kidnapping statute is unconstitutional as applied because it is so vague as to not give peace officers notice that they could be "arrested and convicted of kidnapping for performing [their] official duties." John-Baptiste Br. at 20. We exercise plenary review over that question of law. *San Filippo v. Bongiovanni*, 961 F.2d 1125, 1133 (3d Cir. 1992).

A statute is unconstitutionally vague if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute" or "encourages arbitrary and erratic arrests and convictions." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *see also Kolender v. Lawson*, 461 U.S. 352, 357 (1983). "A statute can be void for vagueness not only on its face, but as applied, as a result of 'an unforeseeable and retroactive judicial expansion of narrow and precise statutory language.'" *United States v. Protex Indus., Inc.*, 874 F.2d 740, 743 (10th Cir. 1989) (quoting *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964)).

We fail to see how a person of ordinary intelligence could possibly think that 14 V.I.C. § 1051 (or any other legislative enactment) authorizes a police officer to hold someone in custody for personal gain until a ransom is paid. As the government notes, the Virgin Islands false imprisonment and kidnapping statute closely tracks those of other jurisdictions. *See*, *e.g.*, 18 Pa. Conn. Stat. §§ 2901, 2903. Like the Virgin Islands' statute, these laws generally proscribe the removal, transport, or confinement of another person when carried out "unlawfully" or "without lawful authority." For John-Baptiste's vagueness argument to have any merit, we would have to conclude that no reasonable law enforcement officer could understand that s/he is proscribed from, *e.g.*, confining or imprisoning another person *without lawful authority.*

In fact, the contrary is true. Police officers can be exposed to civil liability under 42 USC § 1983. In addition, in order to lawfully exercise the police power of the state, they must understand the constitutional restraints imposed on the authority of the state and its agents. No reasonable interpretation of this statute, or any similar statute that we are aware of, could conceivably suggest that a police officer may use his/her police power to extort a ransom in exchange for releasing someone who was being held in custody.

Here, as in any prosecution for kidnapping, the government had to prove beyond a reasonable doubt that the defendant acted without lawful authority. That burden is easily satisfied where the proof would

allow a reasonable juror to conclude beyond a reasonable doubt that a person was held in official custody for private gain rather than in furtherance of an officer's official duties. Despite John-Baptiste's argument to the contrary, we see neither vagueness nor room for confusion about the scope of his legal authority in the text of 14 V.I.C. § 1051.

D. Defendants' Rule 29 Motions.[8]

The government appeals the District Court's grant of Brooks' and Edwards' Rule 29 motions on counts 5, 6, 10, 11, and 12 (relating to the extortion of Love) and 46 (relating to the Lindquist drug transaction). John-Baptiste also appeals the Court's denial of his Rule 29 motion (motion for judgment of acquittal). He argues there was insufficient evidence to sustain his conviction for kidnapping (count 27).

We exercise plenary review over a district court's ruling on a Rule 29 motion. *United States v. Applewhaite*, 195 F.3d 679, 684 (3d Cir. 1999). A defendant "challenging the sufficiency of the evidence" pursuant to Rule 29 "bears a heavy burden." *United States v. Casper*, 956 F.2d 416, 421 (3d Cir. 1992). In reviewing a verdict for sufficiency of the evidence, we "'consider the evidence in the light most favorable to the government and affirm the judgment if there is

[8] "[T]he Rule 29 judgment of acquittal is a substantive [judicial] determination that the prosecution has failed to carry its burden." *Smith v. Massachusetts*, 543 U.S. 462, 468 (2005).

substantial evidence from which any rational trier of fact could find guilt beyond a reasonable doubt.'" *United States v. Benjamin*, No. 11-2906, 2013 WL 1197767, *3 (3d Cir. March 26, 2013) (quoting *United States v. Brown*, 3 F.3d 673, 680 (3d Cir. 1993)).

1. John-Baptiste's Conviction for False Imprisonment and Kidnapping

As noted above, under the applicable statute, the government was required to prove beyond a reasonable doubt that (1) the defendant, intending the victim to be confined or imprisoned, (2) unlawfully took or carried away the victim for a substantial distance, (3) against the victim's will. 14 V.I.C. § 1051.

John-Baptiste argues that the government's evidence was insufficient to prove that he acted "without lawful authority" when he arrested Calixte. He claims that the government's evidence largely relied upon the testimony of VIPD Officer Rodney Querrard, who testified that the VIPD does not recognize an officer's authority to "unarrest" a detainee, as John-Baptiste arguably did once Morino paid the ransom to Edwards and Brooks to secure Calixte's release. John-Baptiste reasons that this testimony was irrelevant because there was no evidence to show that the policies and procedures governing the conduct of a Virgin Islands' police officer such as Querrard also governed officers of the Virgin Islands Port Authority Police. (As noted at the outset, John-Baptiste was a member of the Virgin Islands Port Authority Police).

John-Baptiste also argues that even if Querrard's testimony was properly admitted, it was insufficient to show that his (John-Baptiste's) conduct satisfied the elements of the false imprisonment and kidnapping statute.

While we certainly agree that failing to follow departmental procedures is not tantamount to acting unlawfully, the record here contains sufficient evidence that John-Baptiste acted without lawful authority in detaining Calixte. Specifically, the government introduced the testimony of VIPA Chief Edred Wilkes, who stated that while John-Baptiste may have followed VIPA procedures in *arresting* Calixte, he (Wilkes) was "furious" when he learned that John-Baptiste released Calixte as a favor to Edwards. Joint App. 1083. Given that testimony, and testimony that John-Baptiste accepted money as a condition of releasing Calixte, the jury could reasonably conclude that even if the original seizure of Calixte was lawful, at some point during her detention, John-Baptiste decided to hold her until he received a payment that can only be described as a ransom. From that point until the ransom was actually paid, he was holding her against her will and when he transported her to the location where the ransom was paid, the jury could well have concluded that she was being illegally detained and transported solely to facilitate receipt of the ransom he extorted for her release.

In reviewing a challenge to the sufficiency of evidence, "we are limited to determining whether the conclusion chosen by the factfinders was *permissible*."

United States v. Ashfield, 735 F.2d 101, 106 (3d Cir. 1984) (emphasis added). Viewed in the light most favorable to the government as verdict winner, we conclude that the evidence was more than sufficient to prove that John-Baptiste was guilty of false imprisonment and kidnapping as charged in count 27. Indeed, on this record, it is hard to imagine that the jury could have concluded anything else

2. Extortion and Conspiracy to Extort Under Federal and Territorial Law.

The government challenges the District Court's judgment of acquittal in favor of Brooks and Edwards after the jury convicted them on the charges set forth in counts 5, 6, 10, 11, and 12. Those counts all related to the officers' extortion of Kenneth Love, who, as noted above, paid Brooks and Edwards approximately $825 in return for the release of his truck after it was illegally impounded by Brooks and Edwards.

Counts 5 and 6 charged conspiracy and extortion under the Hobbs Act. To sustain the conspiracy conviction the government had to prove beyond a reasonable doubt that Brooks and Edwards knowingly entered into an agreement to interfere with interstate commerce by extortion under color of official right. 18 U.S.C. § 1951; *see also United States v. Inigo*, 925 F.2d 641, 652 (3d Cir. 1991). To prove extortion, the government had to prove beyond a reasonable doubt that Brooks and Edwards knowingly and willfully obtained Love's property through

coercion resulting from the "wrongful use of actual or threatened force, violence, or fear, or under color of official right" and that this "obstruct[ed], delay[ed], or affect[ed] [interstate] commerce." 18 U.S.C. § 1951(a), (b)(2); *United States v. Manzo*, 636 F.3d 56, 62 (3d Cir. 2011).

a. Extortion

The District Court granted the Defendants' post trial motion for judgment of acquittal, primarily because Love did not make his payment to recover his impounded truck *directly* to Edwards. Rather, Love testified that he "placed [approximately] $825 on the dashboard of [Edwards's] police vehicle" in exchange for obtaining his truck. Joint App. 36, 46. After Love retrieved his truck, he was given an itemized receipt for $825.

The government concedes that there was no direct evidence that Edwards took any of the $825 that Love paid, but argues that direct evidence was not required. *See United States v. Johnson*, 302 F.3d 139, 149 (3d Cir. 2002). The government contends that the prosecution presented sufficient circumstantial evidence at trial to sustain a Hobbs Act extortion charge. The government relies on the following evidence: (1) Edwards repeatedly told Love how much Love would have to pay to get his truck back; (2) Edwards told Love that she had been "taking money . . . from people" for 19 years; (3) Edwards ordered Love to put the money on her patrol car

dashboard; and (4) Love later saw the tow-truck driver with only "a couple hundred dollars" in his hand. Gov. Br. at 48-49, Joint App. at 602. We agree that this was sufficient to convict Edwards of Hobbs Act extortion as charged in count 6.[9]

The jury obviously accepted Love's testimony that after he placed the $825 on Edwards's dashboard, he saw the tow-truck driver with only a couple hundred dollars in his hand. Joint App. 603. That testimony is circumstantial evidence that Edwards gave the tow-truck driver a "couple hundred dollars" for his role in the scheme, but that Edwards retained most of the $825 that Love placed in Edwards' patrol car. *See*, *e.g.*, *United States v. McNeill*, 887 F.2d 448, 450 (3d Cir. 1989) ("The fact that evidence is circumstantial does not make it less probative than direct

[9] The extortion charge in count 10 required the government to prove the same elements as the Hobbs Act with the exception of effect on interstate commerce. *See* 14 V.I.C. § 701. For the territorial bribery conviction in count 11, the government had to prove that Brooks and Edwards were public officials and that they asked for or received "any emolument, gratuity, or reward, or promise thereof" in exchange for an official act. *See id.* § 403. For the conflict of interest charge in count 12, the government needed to show that Brooks and Edwards were territorial officers who knowingly had an interest in a transaction they conducted that was "in substantial conflict with the proper discharge of [their] duties." *See* 3 V.I.C. § 1102(3). Because of these overlapping elements, this same result as to counts 5 (discussed below) and 6 also applies to the District Court's decision to grant the defendants' motion to acquit on count 10 (extortion under territorial law); count 11 (bribery under territorial law); and count 12 (conflict of interest under territorial law).

evidence."). This evidence, when properly viewed in the light most favorable to the government, would clearly allow any reasonable juror to conclude beyond a reasonable doubt that Edwards was guilty of extortion.

b. Conspiracy

The District Court's apparent reliance on the absence of direct evidence also caused it to err in granting a judgment of acquittal on the conspiracy charge. The court explained that it could not find evidence of an explicit agreement between Brooks and Edwards. It did not have to. The court stressed that Brooks remained silent while Edwards told Love that she "had been doing this for 19 years, taking money . . . from people." Joint App. 36. Thus, while Brooks was present in the patrol car while this conversation was going on, the Court noted that "mere presence at the scene of the crime or association with a criminal is not sufficient evidence of a conspiracy." *Id.*

The government concedes that "mere presence" is insufficient to support a conspiracy conviction, but underscores that the existence of an agreement can nonetheless be inferred from the circumstances surrounding a contract. *See United States v. Caraballo-Rodriguez*, 726 F.3d 418, 431 (3d Cir. 2013) (en banc) (holding that proof of an element of conspiracy can be shown by circumstantial evidence: "A case can be built against the defendant grain-by-grain

until the scale finally tips.") (quoting *United States v. Iafelice*, 978 F.2d 92, 98 (3d Cir. 1992)). Indeed, that proposition is so firmly established as to require no citation. We also agree with the government that the circumstances surrounding the interaction of Edwards and Brooks was certainly sufficient to establish an illicit agreement between the two to extort money from Love. The tow-truck driver involved in returning Love's car testified that Brooks spoke to him about the price he thought Love should pay for the release of the truck. Perhaps most damningly, Brooks sat silently by as Edwards explained that she had been taking money from people for 19 years. Therefore, *the unique circumstances here* establish something much more probative than "mere presence." The jury could certainly assume that if one police officer boasts of engaging in such illegal activity for nearly two decades in the presence of another police officer, there must be an agreement and that the agreement arises from a "longstanding pattern of activity and mutual trust" between the two. Here, that relationship can be discerned from the evidence that sustained convictions for other counts as well as the circumstances surrounding the release of the truck. *See United States v. Gibbs*, 190 F.3d 188, 199 (3d Cir. 1999) (holding that buyer shared conspiracy's goal of distributing cocaine, when circumstantial evidence showed he knew about the larger drug operation).[10]

[10] In *Gibbs*, we considered whether circumstantial evidence supported the conspiracy conviction of a defendant who alleged

(Continued on following page)

While we agree that the evidence supporting Brooks' and Edwards' conviction for conspiring to extort Love out of his property is more tenuous than the evidence that Edwards carried out the extortion plan, membership in a conspiracy need not depend on the level of cooperation that the District Court required here. *See United States v. Claxton*, 685 F.3d 300, 305 ("[A] finding of guilt in a conspiracy case does not depend on the government introducing direct evidence that a defendant was a knowing participant in the conspiracy; circumstantial evidence can carry the day."); *United States v. Wexler*, 838 F.2d 88, 90 (3d Cir. 1988) ("The elements of a conspiracy may be

---

he merely bought drugs from a member of conspiracy, where the evidence included tape-recorded conversations between him and his codefendants, many of which were in code and had to be interpreted by an FBI agent. We held that knowledge of and intent to join a conspiracy can be imputed from certain factors such as the length of affiliation between the defendant and the conspiracy, or whether there is a demonstrated level of mutual trust: "when a defendant . . . has repeated, familiar dealings with members of a conspiracy, [he] probably comprehends fully the nature of the group with whom he is dealing . . . and is more likely to perform [acts] for conspiracy members in an effort to maintain his connection to them." *Id.* at 199-200. *See also United States v. Claxton*, 685 F.3d 300, 308-09 (evidence was sufficient to show defendant knew he was participating in criminal enterprise, as required to sustain conviction for conspiracy to possess cocaine with intent to distribute, where defendant picked up coconspirator at airport and transported coconspirator's luggage to another car, where evidence showed defendant knew the luggage contained money from illegal activities, and where conspiracy was operated for a number of years and involved multiple drug-related transactions).

proven entirely by circumstantial evidence. . . ."). Thus, when viewed in the light most favorable to the government, we conclude that the District Court erred in granting judgment of acquittal on the conspiracy counts and that portion of the court's order will be reversed.[11]

c. Conspiracy to Distribute Drugs Under 21 U.S.C. § 846

Count 46 charged Brooks and Edwards with conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846. The charge relates to Brooks's and Edwards's interactions with John Lindquist. As noted above, the government introduced evidence that Brooks coerced Lindquist into selling crack cocaine for him. That evidence established that Lindquist received the crack cocaine from Edwards while he sat in the back of the officers' patrol car. Although Edwards handed the bag containing the crack cocaine to Lindquist and told him that Brooks expected to receive $3,500 for its contents, Lindquist neither heard Edwards admit that she knew what was in the bag, nor saw her look into it.

To establish a conspiracy, the government must prove beyond a reasonable doubt: (1) a shared unity of purpose; (2) an intent to achieve a common illegal goal; and (3) an agreement to work toward that goal. *United States v. Boria*, 592 F.3d 476, 488 n. 12 (3d Cir. 2010). It may do so by direct or circumstantial evidence. *United States v. Brodie*, 403 F.3d 123, 134

(3d Cir. 2005). We have also required proof that the defendant had knowledge of the conspiracy's illegal goal. *Id.* at 148.

We must therefore examine the record to determine whether the government set forth "drug-related evidence, considered with the surrounding circumstances, from which a rational trier of fact could logically infer that the defendant knew a controlled substance was involved in the transaction." *Boria*, 592 F.3d at 481.

In granting the defendants' Rule 29 motion on this count, the court reasoned that there was insufficient evidence for the jury to conclude that Edwards knew the contents of the bag. *See*, *e.g.*, *Cartwright*, 359 F.3d at 287. The District Court concluded that the evidence of a conspiracy was therefore insufficient against Edwards, and thus necessarily insufficient to prove beyond a reasonable doubt that Brooks conspired with her. Joint App. 29.

However, after defendants' trial, we decided *United States v. Caraballo-Rodriguez*, where we reexamined our test for evaluating the sufficiency of the evidence in drug conspiracy cases such as this. 726 F.3d at 431. In doing so, we recognized that we had previously overturned convictions in the absence of specific evidence of a defendant's knowledge of the identity of the illegal drugs s/he possessed even though circumstantial evidence may have been sufficient to establish that knowledge beyond a reasonable doubt. *Caraballo-Rodriguez*, 726 F.3d at 430-431.

We acknowledged that our jurisprudence in this area had "failed to apply the deferential standard the law requires on review of sufficiency of the evidence challenges." *Id.* at 419. As we explained, we had previously sometimes examined the evidence under a microscope – rather than reviewing the evidence as a whole and giving deference to the jury's verdict. *Id.* at 430. Our decision in that case clarified that the appropriate standard of review of the sufficiency of the evidence in a drug conspiracy case is the same as in all other cases: the jury's verdict must be assessed from the perspective of a reasonable juror, and must be upheld if the evidence was sufficient to allow a reasonable juror to conclude beyond a reasonable doubt that the defendant knew what was in his/her possession. *Id.* at 431 (abrogating *United States v. Wexler*, 838 F.2d 88, 92 (3d Cir. 1988), *United States v. Salmon*, 944 F.3d 1106, *United States v. Thomas*, 114 F.3d 403, *United States v. Idowu*, 157 F.3d 265, 268 (3d Cir. 1998), and *United States v. Cartwright*, 359 F.3d 281 (3d Cir. 2004)). Moreover, we specifically disavowed our prior analytical approach and reasoning – that the jury's verdict could not stand when the evidence was as consistent with other contraband, as it was with controlled substances. *Id.* at 432

Thus, while this issue may have presented a close question when the District Court originally decided it, it is now clear that the District Court's grant of this Rule 29 motion was not sufficiently deferential to the jury's verdict.

The evidence introduced at trial established that in 2009, Lindquist met with Brooks and Edwards, who arrived together in a car. Lindquist got into the car, and Edwards handed him a bag while informing him that Brooks wanted $3,500 for it. Lindquist looked into the bag, recognized its contents, and got out of the car. Over the course of the next several months, Lindquist sold the crack cocaine that was in the bag and gave the proceeds to Brooks. The government also argues: "based on the timing of their meeting, the bag's small size, flimsy construction, and light weight, and Edward's statement that 'Brooks wants $3,500 for this,' along with evidence of a 2005 incident involving the sale to Kelvin Moses of six pounds of marijuana, the jury could have concluded that Edwards knew the bag contained drugs." Gov. Br. at 51. We agree.

The same reasoning would have allowed the jury to conclude beyond a reasonable doubt that Edwards knew that the illegal venture involved drugs. *See Caraballo-Rodriguez*, 726 F.3d at 433. In *Caraballo-Rodriguez*, the defendant responded to questions about whether he knew that a suitcase contained drugs by saying: "I didn't know it was drugs. I knew that it was something bad . . . Because nobody is going to pay five thousand dollars for picking up suitcases." *Id.* at 422. We reasoned that the jury could have concluded from the surrounding circumstances that the defendant knew the suitcases contained drugs. Similarly, here, the jury could reasonably conclude that these two *police officers* had enough

common sense and knowledge to understand that if Brooks expected $3500 for the sale of whatever was in the paper bag, Brooks wanted Lindquist to sell the contents of the bag, and given the expected price, the bag most surely didn't contain a tuna fish sandwich.

Moreover, while mere presence at the scene of the crime or association with a criminal is not sufficient evidence of a conspiracy, *see*, *e.g.*, *United States v. Tyson*, 653 F.3d 192 (3d Cir. 2011), the evidence here is – once again – substantially more than "mere presence." The events involving Lindquist took place in 2009, several years into a longstanding pattern of illicit activity between Edwards and Brooks. That activity had, in the past, involved recruiting third parties to sell drugs for them. *See*, *e.g.*, *United States v. Claxton*, 685 F.3d 300, 310 (3d Cir. 2012) ("[A]lthough the number of transactions here does not, on its own, prove [defendant's] knowledge of the character of the conspiracy, it does make it more likely that he knew the business he was about."). Given the circumstances here, the evidence was sufficient to sustain the jury's conclusion that Edwards understood that she was participating in a drug transaction. Accordingly, we conclude that the jury's verdict on count 46 did not "fall below the threshold of bare rationality." *Coleman v. Johnson*, 132 S. Ct. 2060, 2065 (2012). We therefore reverse the District Court's grant of the Rule 29 motion on that

count, and the guilty verdict will be reinstated as to both Edwards and Brooks.[12]

E. Brooks's Rule 33 Motion for New Trial on RICO Conspiracy[13]

Brooks claims that the District Court erred in denying his Rule 33 motion for a new trial on his conviction for RICO conspiracy. He argues that the jury considered evidence of acquitted conduct in convicting him on that count. We review a denial of a motion for judgment of acquittal under Rule 33 for abuse of discretion. *United States v. Silveus*, 542 F.3d 993, 1005 (3d Cir. 2008). However, we again view the evidence supporting a conviction "in the light most favorable to the government and affirm[s] the judgment if there is substantial evidence from which any rational trier of fact could find guilt beyond a reasonable doubt." *Benjamin*, 2013 WL 1197767, at *3.

To establish a conviction for a RICO conspiracy, the government must show: (1) that two or more persons agreed to conduct or to participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity; (2) that

---

[12] Since the evidence was sufficient to support the verdict on this count, we reject Edwards's argument that the District Court improperly attributed the entire 4.5 ounces of cocaine to her at sentencing.

[13] Under F. R. Crim. P. 33, a court may grant a new trial on motion of the defendant "if the interest of justice so requires."

the defendant was a party to or member of that agreement; and (3) that the defendant joined the agreement or conspiracy knowing of its objective to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity. *United States v. Riccobene*, 709 F.2d 214, 224 (3d Cir. 1983).[14]

To establish a pattern of racketeering activity, the government must show that there was "'continuity plus relationship' among the predicate acts." *United States v. Mark*, No. 10-4075, 2012 WL 120092, at *3 (3d Cir. Jan. 17, 2012) (quoting *Sedima S.P.R.I. v. Imrex Co.*, 473 U.S. 479, 496 n. 14 (1985) (quoting S. REP. NO. 91-617, at 158 (1969))). Racketeering acts are "related" if the acts had the same or similar purposes, results, participants, victims or methods of commission. *Barticheck v. Fidelity Union Bank/First Nat'l State*, 832 F.2d 36, 39 (3d Cir. 1987). "[S]poradic and separate criminal activities alone cannot give rise to a pattern for RICO purposes. . . ." *Mark*, 2012 WL 120092, at *3 (quoting *United States v. Eufrasio*, 935 F.2d 553, 565 (3d Cir. 1991)).

Count 1 of the indictment charged a RICO conspiracy and included the following predicate acts:

---

[14] We note that on appeal Brooks does not expressly argue that the government failed to set forth evidence establishing his association with an "enterprise." Accordingly, we need not discuss that element of the crime. However, for a thorough discussion of the proof needed to establish a RICO enterprise, *see United States v. Bergrin*, 650 F.3d 257 (3d Cir. 2011).

drug trafficking, alien harboring, kidnapping, bribery, and extortion. In support of these charges, the government relied on the testimony of Moses, Lindquist, Deeb, Willock, and Love (discussed in Section I.A). The testimony of these witnesses established that Brooks and Edwards regularly demanded money in exchange for drugs or property.

Before submitting the case to the jury, the District Court acquitted the defendants on all counts relating to Deeb and Willock, as well as several others. Joint App. 1311, 2125. Accordingly, the District Court instructed the jury that it had to agree on at least two of the remaining racketeering acts (drug trafficking conspiracy, drug trafficking, kidnapping, kidnapping for extortion, extortion, and bribery). The jury convicted Brooks (and Edwards) of the RICO conspiracy and twelve counts charging offenses that were predicate acts, but the District Court granted Brooks's Rule 29 motion as to four of those twelve counts (6, 10, 11, and 46). The jury did not specify, nor was it asked to specify, which of the predicate acts it relied upon to convict on the RICO conspiracy charge.

Brooks argues that the dismissal of four of the twelve counts relating to the predicate acts required a new trial, since the jury could have relied on dismissed counts to convict him of the RICO charge. He also claims that the lack of credibility of the particular witnesses casts doubt on the convictions on the remaining eight counts.

It is well established that if a jury convicts the defendant on two or more of the predicate acts constituting a RICO violation, the conviction on the RICO count itself will withstand a challenge even if the jury acquitted the defendant on several counts charging other predicate acts. *See United States v. Holzer*, 840 F.2d 1343, 1350-51 (7th Cir. 1988). Even where the jury's verdict is inconsistent, the RICO conviction must stand so long as there is sufficient evidence to prove that the defendant committed two or more predicate acts. *United States v. Vastola*, 989 F.2d 1318, 1331 (1993). As noted, even accounting for the four counts on which the District Court granted the Rule 29 motions, Brooks's (and Edwards's) *eight* convictions for offenses that were predicate RICO acts remain (including extortion, bribery, and drug trafficking). The convictions foreclose Brooks' challenge to the court's denial of his Rule 33 motion on the RICO offense charged in count 1. *Holzer*, 840 F.2d at 1350-51 ("[A] jury is presumed to act rationally, and a rational jury would convict a defendant of racketeering . . . [e]ven if it had exonerated [him] of all the predicate offenses charged except one act of extortion and one receipt of a bribe."). Moreover, Brooks's attack on the sufficiency of evidence amounts to little more than a challenge to the credibility of the witnesses.[15] *See United States v. Cothran*, 286 F.3d 173, 176 (3d Cir. 2002) (refusing to reconcile "inconsistencies" in testimony because "witness credibility [is] an

[15] *See* Brooks Br. at 15-22.

area peculiarly within the jury's domain"). Thus, the District Court properly rejected his claim.

F. Prosecutorial Misconduct

Both Brooks and Edwards argue that prosecutorial misconduct occurred during the trial when the prosecutor withheld exculpatory evidence and suborned perjury. Their argument pertains to the government's use of three witnesses: Love, Deeb, and Willock. As we explain, this argument is unpersuasive.

1. Kenneth Love – Identification of Brooks

At trial, Love identified Edwards but could not identify Brooks. Joint App. 570-71. Thereafter, during a break in Love's testimony, Love and an agent had lunch at the same pizzeria where Brooks and his family ate, and the agent pointed Love out. Joint App. 589. Brooks argues that this was improper because Love had not finished his testimony. Brooks Br. 23-24.

The agent's conduct was clearly improper, and the incident could have been problematic. However, the District Court competently handled the situation. Upon the parties' return to the courtroom, the Court held a hearing outside the presence of the jury to discuss what had occurred during the break. Since Love had not been able to identify Brooks in the courtroom prior to the incident, the Court dismissed any suggestion of a tainted identification and allowed

the government to continue Love's direct examination. Joint App. 595-96. Thereafter, Love was not asked to identify Brooks, nor did he identify Brooks at any point during trial. *See* Joint App. 594-95.

Brooks also argues that Love falsely testified that he had read Brooks' name on Brooks' name tag or badge, Joint App. 581. That testimony was undermined by other officers who testified that VIPD officers' badges have numbers, but no names and that names are not displayed on uniforms. *See* Joint App. 1657-58. However, that conflicting testimony only raised a credibility issue that the jury was free to resolve. Moreover, Brooks fails to explain why the officers' testimony should be given more weight than Love's, and we agree with the District Court's decision to refrain from usurping the role of the jury by attempting to resolve this conflict in Brooks' favor. *See United States v. Richardson*, 658 F.3d 333, 337 (3d Cir. 2011) ("[I]t is the jury's province . . . to make credibility determinations and to assign weight to the evidence."); *United States v. Prejean*, 517 F. App'x 107, 109 (3d Cir. 2013) (jury free to discredit witness's testimony and instead believe evidence offered by other party).

Moreover, even if we assume that Love was not truthful about seeing Brooks's name on his badge, the jury was free to accept the balance of Love's testimony. *See United States v. Merlino*, 349 F.3d 144, 160 (3d Cir. 2003) (noting that "a jury can believe some witness's testimony as to some aspects, and disbelieve others, or not believe any, or believe all."); *Barber v.*

CSX Distribution Svcs., 68 F.3d 694, 700 (3d Cir. 1009) (evaluation of witness credibility is exclusive function of jury, and jury can always choose to discredit testimony); *McCann v. Miller*, 502 F. App'x 163, 170 n.8 (3d Cir. 2012) (jury not required to believe all of the testimony offered by an interested witness).

2. Elias Deeb – Alleged Suppression of Exculpatory Evidence

Brooks also argues that the government engaged in prosecutorial misconduct by omitting an exculpatory portion of Deeb's recorded conversation with a federal agent. Joint App. 447-50. In order for Brooks to succeed, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Here, nothing in the record suggests that the prosecution's decision to only play a portion of the conversation between Deeb and a federal agent amounted to misconduct. The government introduced the *full* tape into evidence. On cross-examination, Brooks's counsel played the allegedly exculpatory conversation for the jury, and highlighted the fact that Deeb never discussed Brooks' involvement in the scheme to obtain a driver's license. Accordingly, even if it could be argued that the prosecution "suppressed" evidence by failing to directly present it to the jury, it cannot be said that the failure prejudiced Brooks.

3. Troy Willock – Controversy Surrounding Witness Identity

Lastly, Brooks and Edwards contend that the prosecution purposefully concealed the controversy concerning the identity of Troy Willock ("Willock 1"), who testified in relation to the marijuana theft charged in counts 48 to 52. Willock 1 was a cooperating witness who testified that in 2008, he saw Brooks "pocket a quantity of marijuana" taken from a dealer during a "shakedown." *United States v. Edwards*, No. 2010-36, 2011 WL 5834241, *3 (D.V.I. Nov. 18, 2011).

Prior to trial, the government learned that the VIPD had files on two Troy Willocks with different fingerprints and photographs but the same name and birthday. The government claims that on the first day of trial, one of the prosecutors placed copies of Willock 1's National Crime Information Center (NCIC) report, along with his Pre-Sentence Report (PSR) for his pending drug charges, on defense counsels' table. Joint App. 2666-68. The government claims that both reports listed multiple social security numbers for Willock 1 and disclosed what the government knew about its witness at that time. Joint App. 2666-68. Defense counsel acknowledged having received the packets, but no defendant cross-examined Willock 1 about his identity. Joint App. 2470-22, 2474, 2477; *see* Joint App. 678-94.

In or about April 2011, another person using the name Troy Willock ("Willock 2") complained to the Social Security Administration in St. Thomas that

Willock 1 had stolen his identity. Joint App. 2666-68. Later that month, Willock 1 appeared for sentencing pursuant to a guilty plea in an unrelated drug distribution case. Willock 1's attorney asked to withdraw on grounds that he "had reason to believe that Willock 1 is not who he claims to be." *Id.* Counsel also stated that he believed that Willock 1 had stolen Willock 2's identity.

On November 1, 2011, the District Court held a hearing to consider the defendants' motion for a new trial and determine whether the controversy surrounding Willock 1's identity had in any way affected this trial. Following the hearing, the Court denied the defendants' motion. The Court held that: (1) there was no specific evidence that Willock 1 had perjured himself at trial, as he testified that his name was "Troy Willock" and no conflicting evidence was introduced; (2) there was not sufficient evidence to show that, if Willock 1 committed perjury, the government knew of it before or during trial; and (3) if Willock 1 committed perjury and the government was blameless, the perjury did not result in a manifest injustice that would require upsetting the jury's verdict. Joint App. 2669.

On appeal, Brooks and Edwards claim that Willock 1's alleged perjury amounts to a due process violation because the government either knew or should have known that Willock 1 would offer false testimony. They claim that the District Court abused its discretion in denying their motion for a new trial because there was a "reasonable likelihood that the

false testimony . . . affected the judgment of the jury." *United States v. Agurs*, 427 U.S. 97, 103 (1976). We reject their arguments for substantially the same reasons relied on by the District Court.

For such a claim to succeed, the defendants must show: "(1) [the government's witness] committed perjury; (2) the government knew or should have known of his perjury; (3) the testimony went uncorrected; and (4) there is any reasonable likelihood that the false testimony could have affected the verdict." *Lambert v. Blackwell*, 387 F.3d 210, 242 (3d Cir. 2004). This record does not contain any evidence that would render the District Court's findings regarding the alleged perjury clearly erroneous. Discrepancies regarding his social security number notwithstanding, there is no direct evidence that Willock 1's name was anything other than "Troy Willock" when the District Court held an evidentiary hearing into the matter. A finding that the witness did not commit perjury would itself "preclude a finding of constitutional error." *Lambert*, 387 F.3d at 243.

The issue of knowledge is a thornier one. At the time of trial, the government certainly appears to have been aware that VIPD records for "Troy Willock" listed two individuals sharing the same name and birth date – a fact that the District Court admitted should have raised red flags. *See Edwards*, 2011 WL 5834241, at *7 (noting odds that two individuals share same name and birth date is "far from impossible" but nonetheless a "highly improbable coincidence"). Moreover, even if the government did not know that

one number belonged to another person, it also understood from NCIC reports that one of the two Willocks was claiming two separate Social Security numbers. *Id.* at *8. Ultimately, as the District Court noted, it is clear that, at a minimum, the government should have investigated the identity of its witness further prior to Willock 1's appearance at the defendants' trial.

However, even assuming *arguendo* that Willock 1 committed perjury and/or that the government knew or should have known that, Willock 1's testimony could not have prejudiced the defendants' *entire* case. His testimony was only relevant to counts 48 to 52 and those charges were dismissed at the close of the government's case. Joint App. 1311. The transaction Willock 1 testified about did not pertain to the RICO conspiracy charged in count 1 for which Brooks and Edwards were convicted.

G. Limitations on Cross-Examination and the Introduction of Character Testimony

Edwards, Brooks, and John-Baptiste all challenge several of the District Court's rulings regarding the admission of evidence. We review these claims for abuse of discretion. *See United States v. Starnes*, 583 F.3d 196, 213-14 (3d Cir. 2009). The District Court's exercise of discretion is commonly left undisturbed "unless no reasonable person would adopt [its] view." *Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 519 (3d Cir. 2003) (internal quotation marks omitted).

1. District Court's Limiting of Cross-Examination of Government Witnesses

Three of the government's witnesses against Edwards were facing their own criminal charges when they testified. On cross-examination, Edwards sought to elicit information from the witnesses relating to any deals each made with the government in exchange for their cooperation. The District Court (acting *sua sponte*) permitted only questions going to the general contours of the sentence reductions and prohibited questions relating to the specific lengths of time they faced without cooperation. The Court's stated concern was that talk of specific terms of incarceration would prejudice the jury by "putting visions of jail and incarceration and penalties" into the jurors' minds as they deliberated, and cause confusion of the issues because they would lack details as to the actual lengths of the witnesses' sentences.

Edwards claims that the District Court infringed on her constitutional right to confrontation by limiting the scope of the cross-examination of three government witnesses to nonspecific questions regarding the reduction of their sentences they received in exchange for their cooperation.

The Sixth Amendment gives a defendant the right to cross-examine the government's witnesses for possible bias. *Davis v. Alaska*, 415 U.S. 308, 316-17 (1974). However, "[a] district court retains 'wide latitude

insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about . . . harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.'" *United States v. Mussare*, 405 F.3d 161, 169 (3d Cir. 2005) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). We review any restriction of cross-examination for abuse of discretion and will reverse only when the restriction "is so severe as to constitute a denial of the defendant's right to confront witnesses against him and . . . is prejudicial to [his] substantial rights." *United States v. Conley*, 92 F.3d 157, 169 (3d Cir. 1996) (internal quotation marks omitted). In assessing whether a limitation on cross-examination violated the Confrontation Clause, we inquire into: "(1) whether the limitation significantly limited the defendant's right to inquire into a witness's motivation for testifying; and (2) whether the constraints imposed fell within the reasonable limits that a district court has the authority to impose." *Mussare*, 405 F.3d at 169. The District Court's ruling was well within this parameter.

The District Court limited inquiry only into *specific* sentences that could have been imposed if the witnesses had refused to cooperate – a line of questioning that we have allowed trial courts to curtail. *See Mussare*, 405 F.3d at 170 (rejecting "categorical right to inquire into the penalty a cooperating witness would otherwise have received"). Indeed, the District Court allowed testimony regarding the

witnesses' agreements to cooperate with the government and the fact that they expected to receive more lenient sentences in return. *See*, *e.g.*, JA 654-55 (exchange between defense counsel and Moses in which Moses admits, *inter alia*, that he "entered into an agreement with the government for what's referred to as substantial assistance"). We conclude that there was no abuse of discretion here.

2. District Court's Limiting of Cross-Examination of Deeb

Edwards attempted to attack Deeb's credibility by cross-examining him about Deeb's alleged submission of a fraudulent insurance claim. Edwards wanted to produce two witnesses who would have testified about this. The District Court ruled that such extrinsic evidence was both impermissible under Fed. R. Evid. 608(b),[16] and barred by Fed. R. Evid. 403 because it would result in an unnecessarily confusing "mini insurance trial." Because Deeb's compensation from the FBI and DEA was at issue, the District Court limited any inquiry related to an insurance payout to matters relating to his income, and not to

[16] Rule 608(a) provides that a party may attack a witness's credibility "by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character." The rule prohibits "extrinsic evidence . . . to prove a specific instance[ ] of a witness's conduct in order to attack or support the witness's character for truthfulness. . . ." *See United States v. Murray*, 103 F.3d 310, 322 (3d Cir. 1997).

the alleged fraud itself. Edwards's again argues that the District Court's decision to limit defense counsel's cross-examination was a violation of her confrontation rights. *See* Edwards's Br. at 19-23.

Edwards's confrontation argument as to Deeb must also fail. In denying Edwards's defense counsel the opportunity to question Deeb as to his past insurance claim, the District Court stressed that it had never been established that Deeb acted fraudulently. *See* Joint App. A 500-02. Accordingly, the District Court acted well within its discretion in concluding that any questions this insurance claim were potentially confusing, misleading, and risked unnecessary delay.

3. District Court's Exclusion of Out-of-Court Statements

During trial, John-Baptiste intended to have five witnesses, who were present during the incident with Calixte testify about that incident. This is the incident we have discussed above[17] and is the same incident that formed the basis of the charges against John-Baptiste. John-Baptiste insisted that his arrest of Calixte was the result of an altercation in which Calixte refused to move her unlawfully parked cab and then proceeded to physically attack him. The proffered testimony was offered to establish that the force used, the arrest, and the detention, were all

[17] *See* Section I.A.

reasonable under the circumstances. Moreover, John-Baptiste intended to use witnesses' recollection that, before the altercation with Calixte, he told the drivers of parked cars "125, 125" – which the witnesses understood was the fine for parking in the relevant loading zone ($125). The testimony was intended to show that he fairly and properly enforced VIPA rules.

The District Court sustained hearsay objections and limited the witnesses' testimony only to what they saw, rather than what they heard. The court also rejected John-Baptiste's argument that the statements were verbal parts of acts showing the state of mind of both parties and therefore not offered for the truth of the matter asserted. Because this incident, and Calixte's post-arrest complaints, form the basis of the allegations against John-Baptiste, he argues that the District Court's "mechanistic[ ]" application of the hearsay rule denied him due process, citing *Chambers v. Mississippi*, 410 U.S. 284 (1973). Jean-Baptiste Br. at 33-34.

John-Baptiste's argument relies on two exceptions to the hearsay rules. First, he claims that any statements he sought to introduce were not hearsay because they constituted "verbal acts" – a legally operative statement, like making a contract or a threat. *United States v. Tyler*, 281 F.3d 84, 98 (3d Cir. 2002). Second – as the government concedes – John-Baptiste's argument could also be characterized as invoking the state of mind exception to the hearsay rule.

Under either of these theories, John-Baptiste's arguments would fail. First, it is unclear how any of the testimony that John-Baptiste sought to introduce – which, he explains would have gone to show the "reasonableness of the actions of the officer" – could be characterized as "verbal acts." *See*, *e.g.*, *United States v. Tyler*, 281 F.3d 84, 98 (3d Cir. 2002) ("The hearsay rule excludes . . . statements which themselves 'affect[ ] the legal rights of the parties or [are] circumstance[s] bearing on conduct affecting their rights.'" (quoting Fed. R. Evid. 801(c))). Moreover, to the extent any testimony would have gone to show either John-Baptiste's or Calixte's frame of mind during their exchange, the government correctly notes that other *non*-hearsay testimony regarding observations adequately informed the jurors of the confrontation. – "[John-Baptiste] approached her car; she threw a drink can at him; he reached for the door handle; he pulled her out; she kicked him; they scuffled; he put handcuffs on her. . . ." Gov. Br. at 33. Accordingly, the District Court acted within the bounds of its discretion when it foreclosed the use of this testimony.[18]

[18] Moreover, John-Baptiste's argument misses the force of the Calixte incident. That incident resulted in criminal charges not because of the initial seizure and detention which may have been appropriate as well as legal. However, despite the legality of the initial arrest, as explained above, it is clear on this record that at some point after she was arrested, John-Baptiste continued Calixte's detention in order to extort a ransom for her release. *That* is the criminality, not the initial arrest and detention.

4. District Court's Refusal to Allow John-Baptiste to Cross-Examine VIPA Chief Wilkes on Calixte's Prior Statements

On cross-examination of VIPA Chief Edred Wilkes, John-Baptiste's defense counsel asked a series of questions attempting to show that Calixte had made statements inconsistent with her prior testimony. The District Court refused to allow this line of questioning because it constituted improper impeachment under Fed. R. Evid. 613. Rule 613 required that Calixte first be given the opportunity to "explain or deny" any extrinsic evidence of a prior inconsistent statement. Joint App. 1120-23. John-Baptiste claims that the District Court's ruling was erroneous and contributed to the denial of his due process rights. The argument is meritless as the Court's ruling was clearly consistent with Rule 613 and well within the Court's discretion. *See United States v. Saada*, 212 F.3d 210, 221 (3d Cir. 2000) ("Rule 613 requires that a witness be given the opportunity to admit or deny a prior inconsistent statement before extrinsic evidence of that statement may be introduced.").

5. Government's use of Deborah Harrigan's Testimony to Rebut Edwards's Alibi Evidence

Edwards claims that the District Court erred by permitting the government to introduce testimony from Deborah Harrigan, because defense counsel had

not received adequate notice of her testimony as required by Fed. R. Crim. P. 12.1. Edwards Br. at 6-7.

Harrigan is a VIPD payroll custodian who rebutted Edwards's claim that she was away for nearly all of 2005. Harrigan testified that Edwards worked VIPD shifts from August 22 through August 31, 2005. Edwards did provide notice of an alibi in accordance with Fed. R. Crim. P. 12(a) as to September 4-18, 2005 (when the drug transaction alleged in counts 3 and 4 took place). However, at trial, Edwards testified that she was away for nearly all of 2005 and that "from August to September" she was in Antigua. Joint App. 1760.

The court properly allowed the government to expand the scope of Harrigan's testimony to address Edwards' expanded alibi. Federal Rule of Criminal Procedure 12.1(3) grants courts the discretion to admit or prohibit a witness's testimony if a party fails to provide the notice required by 12.1(a). The court may grant an exception to the notice requirements "[f]or good cause." *Id.* 12.1(d). Accordingly, the rule provides the district court with discretion and acts to prevent surprise at trial. Harrigan's testimony was properly admitted in response to Edwards' own failure to give adequate notice for her alibi. *United States v. Carter*, 756 F.2d 310, 312 (3d Cir. 1985). Moreover, Edwards was paid for the period in question, and presumably knew that time sheets reflecting that she was on duty during that period would be available to offer into evidence. Thus, she cannot seriously claim that she was surprised by Harrigan's

testimony. Accordingly, we conclude the District Court acted within its discretion in allowing Harrigan's testimony regarding Edwards's whereabouts in August 2005 without prior notice from defense counsel.

V. Conclusion

For the foregoing reasons, we will affirm the District Court's judgment of conviction as to each defendant. We will reverse the District Court's ruling acquitting Brooks and Edwards of conspiring to distribute a controlled substance (count 46). We also reverse the District Court's ruling acquitting Brooks and Edwards of extortion and conspiracy to extort (counts 5, 6, 10, 11, and 12). Accordingly, we will vacate and remand with directions that the District Court reinstate the jury's verdict of conviction and proceed to resentencing.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 12-2301, 12-2354, 12-2675, 12-2875

UNITED STATES OF AMERICA,

Appellee/Cross-Appellant

v.

BILL JOHN-BAPTISTE, FRANCIS BROOKS,
& ENID EDWARDS

Appellants/Cross-Appellees

Appeal from the District Court
for the District of the Virgin Islands (D.V.I.)
(D.V.I. Criminal Action Nos. 3-10-cr-00036-001,
3-10-cr-00036-002 & 3-10-cr-00036-004)
District Judge: Honorable Curtis V. Gomez

Argued: April 24, 2013

Before: MCKEE, *Chief Judge*
and SCIRICA, VANASKIE, *Circuit Judges*

JUDGMENT

This cause came on to be considered on the record from the District Court for the District of the Virgin Islands and was submitted pursuant to Third

Circuit LAR 34.1(a) on April 24, 2013. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the petition to review the judgment of the District Court for the District of the Virgin Islands be and the same is hereby AFFIRMED IN PART, REVERSED IN PART AND REMANDED. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Marcia M. Waldron
Clerk

Dated: February 19, 2014

**IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**Criminal No. 2010-32**
JOHN LINDQUIST,	)	
Defendant.	)	

PLEA AGREEMENT

1. PARTIES TO THE AGREEMENT

This agreement is entered into by and between defendant **JOHN LINDQUIST** and Gabriel Villegas, attorney for John Lindquist, and the United States Attorney for the District of the Virgin Islands. This agreement specifically excludes and does not bind any other territorial, state or federal agency, including the other United States Attorneys and the Internal Revenue Service, from asserting any civil, criminal or administrative claim against the defendant.

2. TERMS

The parties agree to the following terms:

a. Defendant will plead guilty to Count Two of the Indictment. Count Two charges a violation of Title 21, United States Code, Sections 841(a)(1) and

841(b)(1)(iii), Possession with Intent to Distribute fifty (50) or more grams, of a mixture and substance containing a detectable amount of Cocaine Base, a Schedule II narcotic drug controlled substance, which carries a mandatory minimum sentence of ten (10) years, and a maximum sentence of life imprisonment, a fine not to exceed $4,000,000.00, and a term of supervised release of at least five (5) years, and $200.00 special monetary assessment.

b. Defendant acknowledges that the government can prove the following essential elements of Count Two:

To find the defendant guilty of this crime, the government would proved each of the following elements beyond a reasonable doubt:

One: That on or about October 22, 2009, at St. Thomas, in the District of the Virgin Islands;

Two: That the defendant, **JOHN LINDQUIST**, did knowingly and intentionally possess with intent to distribute a controlled substance; and

Three: That the controlled substance was fifty (50) grams or more of a mixture and substance containing a detectable amount of Cocaine Base, a Schedule II narcotic drug.

c. Defendant is pleading guilty because the defendant is in fact guilty of the charges contained in

Count Two. In pleading guilty to this offense, defendant acknowledges that should the case go to trial, the government could present evidence to support this charges beyond a reasonable doubt. Specifically, the government would prove beyond a reasonable doubt that on or about October 22, 2009, DEA, with the assistance of a confidential source, purchased 2 ounce of crack cocaine from the defendant. DEA provided the source $2230.00 which was used to purchase approximately 55.2 grams of crack cocaine. Finally, the government would show, through the testimony of a DEA forensic chemist, that the controlled substances tested positive for the presence of Cocaine Base.

d. Upon the District Court's adjudication of guilt of defendant for violations of Title 21, United States Code, Sections 841(a)(1), the United States Attorney for the District of the Virgin Islands, agrees to seek the dismissal of the remaining count(s) of the Indictment, if any, at the time of the defendant's sentencing. Additionally, the United States Attorney for the District of the Virgin Islands, will not file any further criminal charges against defendant arising out of the same transactions or occurrences to which the defendant has pled.

e. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

3. SENTENCING GUIDELINES

The parties understand and agree that the defendant will be sentenced in accordance with the United States Sentencing Guidelines which are advisory to the Court. Adverse rulings shall not be grounds for withdrawal of defendant's plea. The Court is not limited to consideration of the facts and events provided by the parties. The parties understand that the Court may impose any sentence, subject to the mandatory minimum of 10 years and up to the statutory maximum of life imprisonment, regardless of any guideline range computed, and that the Court is not bound by any position of the parties.

To the extent the parties disagree about the sentencing factors, the computations below identify the factors which may be in dispute.

a. *Base Offense Level.* The government believes that the defendant knowingly and intentionally possessed with intent to distribute 55.2 grams of Cocaine Base, and that the base offense level is 30. (USSG § 2D1.1(a)).

b. *Specific Offense Characteristics.* No specific offense characteristics adjustments apply.

c. *Chapter 3 Adjustments.* No Chapter 3 adjustments apply.

d. *Grouping of Related Counts.* No grouping rules set forth in Guideline Sections 3D1.1-3D1.4 apply.

e. *Acceptance of Responsibility.* The government agrees to recommend that the defendant receive credit for acceptance of responsibility at the time of sentencing, assuming the defendant does in fact clearly demonstrate acceptance of responsibility, in accordance with USSG §3E1.1.

f. *Criminal History Category.* Based on information available at this time, the parties believe that the defendant's criminal history category is II.

g. *Guideline Range.* If the offense level is 30, and the criminal history category is II, the Sentencing Guidelines range is 97-121 months imprisonment. If the defendant demonstrates acceptance of responsibility, his base offense level would be reduced by three (3) levels for an adjusted offense level of 27, with a Sentencing Guidelines range of 78-97 months imprisonment, subject, however, to the mandatory minimum of 10 years and up to the statutory maximum of life imprisonment. The defendant does not meet the criteria set forth in subdivisions (1)-(5) of subsection (a) of 5C1.2, Limitation on Applicability of Statutory Minimum Sentences.

h. *Fine Range.* If the adjusted offense level is 27, the fine not greater than $4,000,000.00 (USSG § 5E1.2(c)(3)).

I. *Supervised Release.* The Sentencing Guidelines require a term of supervised release of not more than 5 years (USSG § 5D1.2(a)(1)).

j. *Departures.* The parties agree that there are no grounds for departure from the applicable guideline range.

k. If the defendant agrees to provide substantial assistance in the investigation or prosecution of another person, as defined in Fed. R. Crim. P. 35, or otherwise agrees to cooperate with the United States Attorney, a supplement to this plea agreement shall be submitted to the Court by the parties, in camera or under seal, and shall specifically refer to this Plea Agreement and shall define the terms of such assistance or cooperation, if any.

l. The Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the Defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction or the manner in which that sentence was determined, on the grounds set forth in Title 18, United States Code, Section 3742(a) or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. In addition, the Defendant expressly waives the right to petition under 28 U.S.C. Section 2255. The Defendant has discussed these rights with the Defendant's attorney. The Defendant understands the rights being waived, and the Defendant waives these rights knowingly, intelligently, and voluntarily. This Agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

m. The parties shall be free to argue whatever sentence each deems appropriate within the incarceration range of 78-97 months. The United States will also recommend credit for time already served.

4. FORFEITURE

a. Prior to sentencing, the defendant shall accurately and completely identify every asset which is either owned by the defendant or is under the defendant's control. All property shall be identified, whether forfeitable or not.

b. Defendant agrees to fully and truthfully disclose all facts which could tend to make any interest which defendant owns or controls in property forfeitable under the laws of any jurisdiction, including property which may be forfeitable as substitute assets.

c. Defendant agrees to forfeit all forfeitable assets to the United States. Defendant shall take all steps necessary to transfer these assets to the United States, including, but not limited to, executing any documents, consenting in any form or cause of action required by the United States, providing information and supporting documentation within the defendant's possession or control, and inducing persons holding property in the defendant's behalf to transfer such property to the United States.

d. At his sole discretion, the United States Attorney may decline to forfeit assets where the

value, or level of equity, or interests not subject to forfeiture, or costs, or other factors make profitable forfeiture impractical.

CONCLUSION

CONCLUSION

There are no other agreements between the United States Attorney for the District of the Virgin Islands and the defendant. The defendant enters this agreement knowingly, voluntarily, and upon advice of counsel.

Respectfully submitted,

RONALD W. SHARPE
UNITED STATES ATTORNEY

Dated: July 22, 2010 /s/ Kim R. Lindquist
Kim Lindquist
Chief of Criminal Division

Dated: July 22, 2010 /s/ Delia L. Smith
Delia L. Smith
Assistant United States Attorney

[August 11]
Dated: ~~July~~ ___, 2010 /s/ Gabriel Villegas
Gabriel Villegas
Attorney for Defendant

[8-11-]

Dated: July ___, 2010 /s/ John Lindquist
John Lindquist
Defendant

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
V.	(Filed Feb. 28, 2011)
LINDQUIST, SR., JOHN a/k/a Johnny	Case Number: **3:10CR00032-G-001**
	USM Number: 01706-094
	AFPD, Gabriel Villegas Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) II

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1) and (b)(1)(A)(iii)	Possession With Intent to Distribute Cocaine Base	06/24/2010	II

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

X Count(s) I X is ☐ dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

February 10, 2011
Date of Imposition of Judgment

[Illegible]
Signature of Judge

Curtis V. Gómez, Chief Judge
Name and Title of Judge

February 25, 2011
Date

cc: AUSA, Delia Smith; AFPD, Gabriel Villegas; Immigration Office; U.S. Marshal's Service: Cynthia Romney; V.I. Police Records – DOB: (12/13/1971) Bureau of Corrections: Order Book

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Fifteen (15) months.**

That pursuant to Public Law 108-405, revised DNA Collection requirements under the Justice for All Act of 2004, the defendant shall submit to DNA collection while incarcerated in the Bureau of Prisons, or at the direction of the U.S. Probation Office.

X The court makes the following recommendations to the Bureau of Prisons:

1. **That the defendant shall participate in the Inmate Financial Responsibility Program.**

2. **That the defendant shall participate in the Bureau of Prison's 500 hour Substance Abuse Treatment Program.**

X The defendant is remanded to the custody of the United States Marshal, pending his designation.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Five (5) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from

any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as

well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

As a special condition of supervised release, the defendant shall submit to random substance abuse testing, and participate in a program of out-patient or in-patient substance abuse treatment, as directed by the U.S. Probation Office.

It is ordered that the defendant pay a fine of $2,000.00, which can be paid through participation in the Inmate Financial Responsibility Program.

It is further ordered that, pursuant to Title 21 United States Code, Section 853, the defendant shall forfeit, to the United States of America, any property constituting or derived from any proceeds obtained directly or indirectly as a result of the offense that he stands convicted of, any property used, or intended to be used, in any manner or part to commit or facilitate the commission of the offense. The forfeitable property includes but is not limited to, the sum of money in U.S. Currency representing the total amount of money used to facilitate the offense.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	**Fine**	**Restitution**
TOTALS	$ 100.00	$ 2,000.00	$0.00

☐ The determination of restitution is deferred ____. An *Amended Judgment in a Criminal Case* (AO 245C) will be after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately

proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea ___

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

  ☐ the interest requirement is waived for ☐ fine ☐ restitution.

  ☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ ____ due immediately, balance due

☐ not later than _____ , or

☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined ☐ C, ☐ D or, ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F X Special instructions regarding the payment of criminal monetary penalties:

$100.00 Special Assessment is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE DISTRICT COURT
OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

– – –

UNITED STATES OF AMERICA and THE PEOPLE OF THE VIRGIN ISLANDS Plaintiffs, vs. ENID EDWARDS, FRANCIS BROOKS, BILL JOHN-BAPTISTE, Defendants.	)	CRIM. NO. 2010-36

JURY TRIAL

DAY 1

Monday, January 3, 2011

– – –

BEFORE: THE HONORABLE CURTIS V. GOMEZ
Chief Judge

APPEARANCES:

OFFICE OF THE UNITED STATES ATTORNEY
BY: KIM LINDQUIST, AUSA
NOLAN PAIGE, AUSA
KELLY LAKE, AUSA
5500 Veterans Drive Suite 260
St. Thomas, Virgin Islands 00802

For the Government

JOHN RUSSELL BART PATE, ESQ.
AND
JAY SHREENATH, ESQ.
5193 Austell Road
Austell, Georgia 30106

For Defendant Edwards

– – –

* * *

[191] CROSS-EXAMINATION

BY MR. HODGE:

Q. Good afternoon, Mr. Moses.

A. Good afternoon, Attorney Hodge.

Q. Mr. Moses, this whole testimony that you're giving, you said it's based on hope, is that correct?

A. Based, when you say "based" – "based on hope" –

Q. At the beginning of your trial – of your testimony, you said you hope to get something. Do you remember using that word, "hope"?

A. Yeah.

Q. And what is it you hope to get, you said?

A. Well, sir, Attorney Hodge, I hope for – in cooperating, that I would receive a lesser sentence than what I'm supposed to receive. I hope.

[192] Q. And part of that hope is you hope these 12 people believe you, too, isn't that correct?

A. Well, I would say yes, I hope they believe. I'm telling them the truth, so I hope they believe. I hope they do.

Q. And the reason why that hope is there is you're looking at 10 years to life, isn't that correct?

A. Ten, yes, that's it, sir.

THE COURT: Stop. Come to sidebar.

(Sidebar discussion held as follows:)

THE COURT: Attorney Hodge, you've been in here with me before. You know that punishment is something that we never ever put in front of the jury. In fact, it's part of the standard instructions: You are not to think about punishment at all. It is beyond your province as a juror.

I don't want the lawyers putting it in front of them in some other fashion so they can go back and have visions of jail and incarceration and penalties, not at all. That's particularly why, in some instances, certain documents that the government or even defense might seek to come – enter as evidence the Court is reluctant to let in as evidence, because frequently they refer to things about punishment, about which the jury should not be concerned. So my intention is to – I'll [193] hear you on this – but I don't want –

MR. HODGE: Yes.

THE COURT: Let me make it clear to all counsel. I don't want punishment at all to come up

anymore in this trial. Does the Government understand?

MR. PAIGE: Yes, the government does.

THE COURT: Does – Attorney King, you understand?

MR. KING: I usually don't, judge.

THE COURT: You do understand?

MR. KING: I understand.

THE COURT: All right.

Attorney Shreenath, do you understand?

MR. SHREENATH: Judge, may I ask for a clarification on that?

THE COURT: Sure, of course.

MR. SHREENATH: I intended to go in on my cross-examination, that essentially, he's expecting a lesser jail time as a result –

THE COURT: Of course, that's fair game.

MR. SHREENATH: So –

THE COURT: I just don't like the idea of when there's a specific jail time out there, like someone saying 10 to life or 20 to life, I don't want a jury to think about that.

[194] The fact that someone, you wish to exploit the notion that someone might be singing for their

supper, they want to get a – either they received a payment or they expect to get some consideration in terms of sentence by reducing a sentence by 25, 50 percent, whatever you feel, that's fine. But I don't want statutory discussions or discussions about what a statute may provide for, particularly when you're using terms like 10 to life or 20 to life.

MR. HODGE: I –

THE COURT: That's impermissible.

MR. HODGE: I would like to state my objection on the Court's ruling, because this jury would not have any idea as to the severity and the need for this man to lie, what he really means when he said he hope.

And for the jury to sit there and just hear he is cooperating because he hope for a lesser sentence, with the jury not knowing why he's hoping for a lesser sentence, the jury have to have an idea as to what is the risk involved if he doesn't convince them.

And it's highly prejudicial to the defense for the Court to censor the defendant from clearly –

THE COURT: I'm not censoring you.

MR. HODGE: – and unequivocally –

THE COURT: Stop.

[195] I'm not censoring you. What I'm doing is setting some conditions on the cross, which I believe the Court has some discretion to do. That is, I am not

going to have this jury going in the other direction and thinking that somehow he's exposed to life, when he may or may not be. That is something that the Court has to determine when it reviews the PSR and considers the 3553 factors and the whole host of other things.

This is not a sentencing. The jury doesn't have all the information, nor need they be concerned with it. At this point, it seems to me the thing that you want to explore – and the Court will not cut you off – is that this defendant, like many others, is exposed to jail time, perhaps substantial jail time.

You don't know. He's not even sure. I don't even know if he's got a PSR. I don't know if the Court has pronounced on anything on the PSR, whether it's even accurately calculated, which is the first thing the Court has to do.

So he's not really in a position to talk about that, nor are you in a position to, and I don't want this issue being confused.

Now, I can appreciate your objection, but I am not cutting you off when it comes to exploiting – if you wish to – that he is exposed to jail time, it might be [196] considerable, he wants a reduction, and that the reduction he wants is not a minimal reduction. He probably wants something major.

And if you want to explore and exploit, or do whatever you have to to suggest that his testimony might be connected to that, and there might be a,

some direct relationship between the two things, that is, the more he speaks, the bigger the reduction, you can do all of that.

MR. HODGE: Yes, sir. But. I am talking –

THE COURT: But I'm not going to allow you to get into life, 10 years, 20 years, whatever it is, because you don't know, he doesn't know, and this is not something the jury needs to be concerned with.

Thank you, Counsel.

(End sidebar conference, open court as follows:)

THE COURT: Go right ahead, Attorney Hodge.

BY MR. HODGE:

Q. Do you have knowledge that you are facing a considerable length of time, considerable length of jail time?

Is that correct?

A. Yes, Attorney Hodge.

Q. And you entered into an agreement with the government for what's referred to as substantial [197] assistance, isn't that correct?

The plea agreement requires you to do what, sir?

A. It requires me to testify truthfully about any criminal activity that I have been a part of.

Q. And it requires you to provide substantial assistance for the arrest and conviction of others, is that correct?

A. I think that's, that's correct. I think so.

Q. And you hope that the more substantial information you provide, the more leniency, perhaps, you might get in your sentencing?

A. Yes, sir, I do.

* * *