United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 13, 2026
Thomas B. Plunkett, III
Clerk

No. 25-40716
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEABLO DESHON LEWIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 5:22-CR-4-1

Before BARKSDALE, WILLETT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Following a jury trial, Deablo Deshon Lewis was convicted on Count One of conspiring to distribute and possess with intent to distribute a controlled substance, in violation of 21 U.S.C. §§ 846 (prohibiting conspiracy), 841(b)(1)(B) (setting penalty), and on Count Two of using or carrying a firearm during and in relation to and possessing a firearm in

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (prohibiting use and possession of firearm in furtherance of drug-trafficking crime). He was sentenced to 240 months' imprisonment, followed by five years' supervised release.

In challenging his convictions, Lewis contends: the Government's evidence as to Count Two (firearm in furtherance of drug-trafficking crime) was insufficient; the district court erred by permitting testimony violating the Confrontation Clause; a witness improperly provided expert and legal opinion testimony; and the cumulative errors denied him a fundamentally fair trial.

Regarding Lewis' contending there was insufficient evidence to support his conviction on Count Two, he maintains the Government failed to establish he possessed firearms in furtherance of a drug-trafficking crime. Because he moved for acquittal (at the close of the Government's case; he did not present evidence) and raises the contention on appeal, it is preserved. *See United States v. Brown*, 727 F.3d 329, 335 (5th Cir. 2013). Challenges to the sufficiency of the evidence are reviewed *de novo*. *See United States v. Chapman*, 851 F.3d 363, 376 (5th Cir. 2017). Under this standard, we review the evidence adduced at trial to determine if it supports a conviction beyond a reasonable doubt. *Id.* In doing so, we "review the evidence in the light most favorable to the verdict, accepting all credibility choices and reasonable inferences made by the jury". *Id.* (citation omitted).

Lewis' challenge fails under this standard. To sustain a conviction for possessing a firearm in furtherance of a drug-trafficking crime, the Government must establish more than mere possession; it must present evidence showing "possession actually furthered the drug trafficking offense". *United States v. Charles*, 469 F.3d 402, 406 (5th Cir. 2006). Relevant considerations include the type of drug activity involved, the

firearm's accessibility and type, whether it was stolen or lawfully possessed, whether it was loaded, its proximity to drugs, and the circumstances of its discovery. *Id.*

Officers recovered substantial quantities of drugs, digital scales, and two loaded firearms with matching ammunition from Lewis' residence. The loaded firearms were accessible in Lewis' bedroom in a separate drawer, but in the same dresser, as the drugs, and his identifying documents were found with the firearms. Both firearms—a .25 semiautomatic pistol and a .357 revolver—are commonly associated with drug trafficking. *See United States v. Moya*, 18 F.4th 480, 483–84 (5th Cir. 2021) (recognizing .25 handgun supported jury's verdict because of common use in drug trafficking); *United States v. Yanez Sosa*, 513 F.3d 194, 201 (5th Cir. 2008) (recognizing loaded .357 revolver weighs in favor of jury's verdict). Moreover, a co-conspirator testified to seeing Lewis possessing a firearm in his vehicle while he sold drugs at an apartment complex. *See United States v. Thompson*, 735 F.3d 291, 302–03 (5th Cir. 2013) (recognizing testimony that appellant carried weapon during drug deals supported jury's verdict).

Although Lewis emphasizes the officers did not find a firearm during their encounters with him and no drug transactions were shown to occur at the searched residence, the Government was not required to establish the drugs were sold at the same location where the firearms were recovered. *See Charles*, 469 F.3d at 406–07 (finding evidence sufficient despite appellant's contending no evidence showed drugs were sold where firearms were recovered).

Lewis does not show it was unreasonable for the jury to infer from these facts that he possessed a firearm in furtherance of a drug-trafficking crime. Accordingly, the evidence was sufficient for a reasonable juror to find him guilty beyond a reasonable doubt on Count Two.

Lewis' contention that the court erred by admitting certain testimony in violation of the Confrontation Clause was not preserved in district court. Therefore, our review is only for plain error. *E.g.*, *United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Lewis must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, we have the discretion to correct the reversible plain error, but generally should do so only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings". *Id.* (citation omitted).

The Sixth Amendment prohibits admission of testimonial statements made by non-testifying witnesses and offered for their truth when the defendant lacked the requisite opportunity for cross-examination. *See United States v. Martinez-Rios*, 595 F.3d 581, 585 (5th Cir. 2010). In particular, officers may not relay the substance of statements by non-testifying witnesses directly inculpating a defendant under the guise of explaining their investigation. *See United States v. Kizzee*, 877 F.3d 650, 656 (5th Cir. 2017).

Lewis challenges testimony concerning information initially identifying him as a drug dealer, communications surrounding the planned buy-bust operation, statements obtained during the investigation of the second residence, and statements that he was known to carry firearms. The Government concedes some of this testimony constituted clear-or-obvious error. In any event, Lewis must also show an effect on his substantial rights. *See Puckett*, 556 U.S. at 135. For the following reasons, he fails to make the requisite showing. *See United States v. Sharp*, 6 F.4th 573, 581–83 (5th Cir. 2021) (effect on substantial rights not shown where there was overwhelming evidence of guilt).

Regarding Count One (conspiracy), Lewis asserts the challenged testimony supplied the only evidence of an agreement between him and a co-conspirator. The Government's conspiracy theory, however, was not limited to that individual. At trial, the Government made it clear that the conspiracy could involve numerous other individuals. Additionally, following the planned buy-bust operation, officers recovered substantial quantities of drugs, digital scales, and two loaded firearms from Lewis' residence. *See United States v. Escajeda*, 8 F.4th 423, 427 (5th Cir. 2021) (recognizing large amount of drugs and presence of weapons can serve as drug-conspiracy proof). Lewis even informed officers he had a source of supply for pills and delivered pills to others. Text messages further reflected ongoing drug transactions, including arrangements to supply drugs on consignment, which support an inference of an ongoing drug-distribution agreement. *See United States v. Posada-Rios*, 158 F.3d 832, 860 (5th Cir. 1998) (providing drugs on consignment "is strong evidence of membership in a conspiracy because it indicates a strong level of trust and an ongoing, mutually dependent relationship" (citation omitted)). A co-conspirator also testified that Lewis regularly sold drugs.

Accordingly, substantial evidence supported Lewis' conviction on Count One independently of the challenged statements. As provided regarding the challenge to conviction on Count Two (sufficiency-of-the-evidence), ample evidence independently supports the jury's verdict on that count. Given the overwhelming evidence of his guilt on both counts, Lewis has not shown the alleged errors affected his substantial rights. *See Sharp*, 6 F.4th at 581–83.

Lewis further contends the district court committed reversible error by allowing Officer Lewis to offer expert testimony regarding the background of the opioid epidemic, drug-trafficking practices, items recovered during Lewis' residence-search, and interpretations of text messages. Although

Lewis objected on speculation grounds to a portion of the challenged testimony, the objection did not preserve the distinct theories raised on appeal of impermissible expert and legal opinion testimony. Accordingly, this contention is also subject to plain-error review. *See United States v. Enclade*, 187 F.4th 766, 789 n.3 (5th Cir. 2026) (explaining bare speculation objection did not alert district court to distinct theory pressed on appeal); *see also Puckett*, 556 U.S. at 135.

The testimony was largely based on Officer Lewis' investigation in this case as well as prior investigations. *See Enclade*, 187 F.4th at 788 ("Testimony does not become expert testimony merely because it reflects an officer's experience; it must involve more than common sense or the officer's past experience formed from firsthand observation." (citation omitted)). Officer Lewis "did not testify from training manuals or scientific literature on narcotics trafficking" but rather "from his own firsthand experience investigating narcotics conspiracies". *Id.*

Our court has recognized lay witnesses may testify concerning certain methods of operation associated with drug-trafficking and interpret communications based on firsthand investigative knowledge. *See United States v. El-Mezain*, 664 F.3d 467, 514 (5th Cir. 2011) ("Testimony need not be excluded as improper lay opinion, even if some specialized knowledge on the part of the agents was required, if it was based on first-hand observations in a specific investigation."); *United States v. Espino-Rangel*, 500 F.3d 398, 400 (5th Cir. 2007) (recognizing lay opinion testimony can consist of "particular conduct or methods of operation unique to the drug business"). Accordingly, Lewis has not shown admitting those portions of Officer Lewis' testimony constituted the requisite clear-or-obvious error.

To the extent other portions of the Officer's testimony required specialized knowledge or improperly interpreted ordinary language the jury

could evaluate without assistance, substantial evidence independent of the challenged testimony supported both convictions. *See United States v. Lucas*, 849 F.3d 638, 646 (5th Cir. 2017) ("Given the overwhelming quantum of evidence used to convict, any error did not affect [appellant]'s substantial rights" even with possible "inappropriate opinion testimony".). Accordingly, Lewis has not shown their admission affected his substantial rights.

Given the foregoing, and because Officer Lewis was not permitted to testify as an expert, our court is also unpersuaded by Lewis' contending the court plainly erred by failing to differentiate between Officer Lewis' lay and expert testimony. *Cf. United States v. Haines*, 803 F.3d 713, 723, 730–32 (5th Cir. 2015) (error in failing to differentiate between agent's expert and lay testimony when agent was permitted to testify in dual roles).

Lewis additionally contends the court plainly erred by admitting testimony in the form of legal conclusions. Although Officer Lewis impermissibly opined on whether Lewis' conduct satisfied the legal definition of a conspiracy (Count One), the error did not affect Lewis' substantial rights given the overwhelming evidence of his guilt on that count. *See United States v. Williams*, 343 F.3d 423, 435 (5th Cir. 2003) (improper legal conclusion "did not affect the outcome of [appellant]'s trial" when "evidence against [him] was overwhelming"). Lewis has also not shown how Officer Lewis' testimony as to why drug traffickers generally possess firearms constituted an impermissible legal conclusion rather than testimony addressing conduct unique to the drug business based on his firsthand observations. *See El-Mezain*, 664 F.3d at 514; *Espino-Rangel*, 500 F.3d at 400.

Lewis finally contends he is entitled to relief under the cumulative-error doctrine. "Under the cumulative error doctrine, an aggregation of non-reversible errors (i.e., plain errors failing to necessitate reversal and harmless

errors) can yield a denial of the constitutional right to a fair trial, which calls for reversal." *Enclade*, 187 F.4th at 795–96. The question is whether the trial is so fatally infected by the errors as to result in a violation of the trial's fundamental fairness. *Id.* at 796. The cumulative-error doctrine is applied rarely and is especially uncommon where the Government presents substantial evidence of guilt. *Id.*

As in *El-Mezain*, "this was not a perfect trial, and there were errors". 664 F.3d at 535. In any event, Lewis received a fair trial. *See id.* ("[T]he Constitution does not guarantee a perfect trial, only one that is fair".). The Government presented ample, unchallenged evidence of Lewis' guilt on both counts including his own statements and text messages, a substantial amount of drugs, two loaded firearms, and a co-conspirator's testimony. Accordingly, the cumulative-error contention fails.

AFFIRMED.