

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of September, two thousand twenty-six.

PRESENT:

REENA RAGGI,
MARIA ARAÚJO KAHN,
Circuit Judges,
RACHEL P. KOVNER,
*District Judge.**

UNITED STATES OF AMERICA,

Appellee,

v.

No. 24-2287-cr

ONIEL WILKS,

Defendant-Appellant.

* Judge Rachel P. Kovner of the United States District Court for the Eastern District of New York, sitting by designation.

FOR APPELLEE:

KAREN L. PECK (Elena Lalli Coronado, *on the brief*), Assistant United States Attorneys, *for* David X. Sullivan, United States Attorney for the District of Connecticut, New Haven, CT.

FOR DEFENDANT-APPELLANT:

DANIELLE MUSCATELLO (Donna Aldea, *on the brief*), Barkett Epstein Kearon Aldea & Loturco, LLP, Garden City, NY.

Appeal from a judgment of the United States District Court for the District of Connecticut (Thompson, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the August 16, 2024 judgment of the district court is **AFFIRMED**.

Defendant-Appellant Oniel Wilks was convicted by a jury of conspiracy to possess with intent to distribute one kilogram or more of heroin, five kilograms or more of cocaine, and 400 grams or more of fentanyl, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A); making a false statement in a passport application, in violation of 18 U.S.C. §§ 1542 and 2; aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1); and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). Wilks now appeals his convictions of both the narcotics and

money laundering conspiracies. He argues that (1) the evidence was insufficient to support both convictions, (2) the district court abused its discretion in admitting evidence of his drug trafficking activity that post-dated a co-conspirator's arrest, and (3) the district court erred in admitting statements of non-testifying co-conspirators.

BACKGROUND

In 2013, Wilks and co-conspirator Louie McDowell met in prison.¹ They became friends and discussed the possibility of collaborating in the drug business after release. Wilks was released in 2014 and was deported to Jamaica.

After his removal, Wilks contacted McDowell, who had likewise been released from prison, and asked if McDowell knew of someone who would sell him their identity. McDowell arranged for his aunt, Theresa Grant, to sell Wilks the identity of her mentally-disabled son, Michael Grant. In February 2016, Wilks submitted a U.S. passport application—which was granted—using Grant's information. Around this time, Wilks moved to California, and obtained multiple other fake identities.

¹ "In reviewing a criminal conviction, we view the evidence in the light most favorable to the government." *United States v. Desposito*, 704 F.3d 221, 223 n.1 (2d Cir. 2013).

Wilks and McDowell began to distribute drugs together in 2015. Within a brief time, Wilks was sending McDowell several kilograms of heroin and cocaine per month from California. Wilks would ship the drugs “in block form” encased in stretch wrap and covered in a “chemical that would mask the smell.” App’x 851-52. McDowell then sold the drugs to his associates in Connecticut, including his cousin, Antonio Small, and uncle, Michael Munn.

McDowell would then send the proceeds back to Wilks by making bank deposits into various accounts that Wilks identified by “a name and a number.” App’x 827. These deposits were in the form of cash and a cashier’s check made out to one of Wilks’s aliases, with each deposit carefully structured under \$10,000 to avoid reporting requirements and detection.

In 2017, a task force led by the FBI began investigating drug trafficking in Bridgeport, Connecticut. During the investigation, agents initiated wiretap surveillance on two phones used by McDowell’s cousin, Small, which led them to McDowell. In 2018, police pulled the trash from outside McDowell’s home in Seymour, Connecticut, and found several items consistent with drug trafficking, including block forms, cellophane wrapping, and paper towels stained with red

automotive fluid. Several of these items subsequently tested positive for trace amounts of cocaine and fentanyl.

On November 6, 2018, investigators arrested McDowell and executed a search warrant on his home, which he shared with his girlfriend, Patricia Saunders. From inside McDowell's home, investigators found, amongst other things, approximately one kilogram of cocaine, approximately 300 grams of heroin, 10.5 grams of cocaine base, about a dozen cell phones, and \$129,000 in cash. Agents also found a key to a safe deposit box leased by Saunders, which contained \$217,000 in cash, all deposited by Saunders.

After his arrest, investigators searched McDowell's cell phones to trace his source of supply, which led them to Wilks. Several months after McDowell's arrest, in April 2019, federal agents observed a suspected drug trafficker in California, Andres Ramirez, place a weighted plastic bag into Wilks's car. When officers later stopped Wilks's car, they recovered a plastic bag containing five kilograms of cocaine. Wilks was initially arrested but was subsequently released.

On July 23, 2019, investigators followed Wilks from his home to a UPS store an hour away and observed him drop off a package. The package was addressed to East Barber Street in Windsor, Connecticut, a few blocks from an address where

McDowell and his uncle, Michael Munn, had previously picked up drugs shipped by Wilks. Upon executing a search warrant, police found six kilograms of cocaine, wrapped in stretch wrap and paper towels and covered in “thick, red grease.” App’x 357.

On August 5, 2019, investigators arrested Wilks in California pursuant to an arrest warrant. Wilks’s wallet contained multiple credit, debit, and identification cards in various names, but none in his own. In subsequent searches of his car and apartments, police discovered, among other things, buckets of red automotive grease, preprinted shipping labels to East Barber Street, four kilograms of fentanyl mixed with xylazine, and over \$160,000 cash.

We assume the parties’ familiarity with the remaining facts, the procedural history, and the issues on appeal, to which we refer only as necessary to explain our decision.

DISCUSSION

I. Sufficiency of the Evidence: Narcotics Conspiracy

Count One of the superseding indictment charged Wilks with conspiring to distribute narcotics with Louie McDowell and “others unknown,” from “about 2015” until “about August 5, 2019.” App’x 49-50. On appeal, Wilks argues that,

contrary to the single conspiracy charged, the evidence at trial established multiple conspiracies. Specifically, Wilks claims “that there were at least two independent conspiracies: one involving McDowell in Connecticut, which ended with McDowell’s [2018] arrest . . . and another separate one involving Wilks and other unknown persons, which continued until August of 2019.” Appellant’s Br. at 54. He contends that the variance between the superseding indictment and trial evidence was prejudicial and that the evidence was insufficient to convict him of the charged conspiracy.

“The matter of whether there existed a single conspiracy as charged in the indictment, or instead multiple conspiracies that did not include the conspiracy alleged, is a question of fact for a properly instructed jury.” *United States v. Payne*, 591 F.3d 46, 62 (2d Cir. 2010) (internal quotation marks omitted). Here, at Wilks’s request, the district court gave the jury a detailed instruction regarding Wilks’s multiple conspiracies defense. We accordingly review Wilks’s argument on appeal—that the evidence was insufficient to sustain the jury’s finding of a single conspiracy—*de novo*, and we will uphold a jury verdict if “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Atilla*, 966 F.3d 118, 128 (2d Cir. 2020) (internal quotation marks

omitted). Wilks “bears a heavy burden” in prevailing on his sufficiency challenge “as the standard of review is exceedingly deferential.” *United States v. Dupree*, 870 F.3d 62, 78 (2d Cir. 2017) (internal quotation marks omitted).

Wilks cannot meet this burden because the trial evidence, when viewed in the light most favorable to the government, readily establishes that Wilks conspired with McDowell and others to distribute narcotics in a single conspiracy as charged in the superseding indictment. McDowell testified in detail about how he and Wilks first planned the conspiracy, how Wilks arranged drug deliveries for McDowell to sell, and how McDowell remitted payment to Wilks once the drugs were sold. Although “[a] conviction may be sustained on the basis of the testimony of a single accomplice,” *United States v. Diaz*, 176 F.3d 52, 92 (2d Cir. 1999) (internal quotation marks omitted), here McDowell’s testimony was corroborated by text messages between Wilks and McDowell coordinating deliveries and payments, surveillance footage showing McDowell paying Wilks for the drugs, and a recorded call following McDowell’s arrest where the two discussed maintaining their operation. This evidence sufficed to permit a reasonable jury to find that Wilks “agreed to participate in what he knew to be a collective venture directed toward a common goal,” *United States v. Washington*, 48

F.3d 73, 80 (2d Cir. 1995) (internal quotation marks omitted), and that the conspiracy did not end with McDowell's arrest. *See United States v. Cruz*, 797 F.2d 90, 98 (2d Cir. 1986) (explaining that arrest of co-conspirator did not terminate conspiracy nor defendant's participation therein). Thus, the evidence supports Wilks's conviction on Count One.

Wilks's claim of prejudicial variance likewise fails because Wilks's conduct after McDowell's arrest was part of the ongoing charged conspiracy. Variance occurs when a conviction is obtained on the "theory that all defendants were members of a single conspiracy although, in fact, the proof disclosed multiple conspiracies." *United States v. Pierce*, 785 F.3d 832, 845 (2d Cir. 2015) (internal quotation marks omitted). However, McDowell's arrest did not terminate the ongoing conspiracy involving multiple members. As we have noted, a "single conspiracy is not transformed into multiple conspiracies merely by virtue of the fact that it may involve two or more phases or spheres of operation." *Payne*, 591 F.3d at 61 (internal quotation marks omitted). Indeed, we have "gone quite far in finding single conspiracies in narcotics cases," particularly when the evidence shows "mutual dependence and assistance among the spheres, a common aim or

purpose among the participants, or . . . that each actor was aware of his part in a larger organization.” *Pierce*, 785 F.3d at 845–46 (internal quotation marks omitted).

Here, the trial evidence demonstrated that Wilks orchestrated a complex and multi-level drug trafficking operation which included more individuals than just himself and McDowell. For example, McDowell testified that Wilks would send couriers whom McDowell did not know to McDowell’s home to deliver drugs and collect payments. McDowell further testified that he was aware that Wilks shipped drugs to other people and that he “would try to get rid of [the drugs] for [Wilks]” when those customers had “issues.” App’x 861-62. Moreover, both before and after McDowell’s arrest, Wilks shipped grease-covered drugs from California to the same East Barber Street address in Windsor, Connecticut, which was located only a few blocks from where McDowell received Wilks’s shipments. Indeed, at the time of Wilks’s arrest, he was found with multiple pre-printed shipping labels addressed to the same East Barber Street address. Thus, a reasonable juror could have inferred that the Windsor address was a consistent component of Wilks’s overall drug trafficking operation, and Wilks’s continued use of at least some “common participants,” and “distinctive methods and means” to achieve the same “overriding goal” therefore supports a finding that Wilks

engaged in a single conspiracy. *United States v. Berger*, 224 F.3d 107, 115 (2d Cir. 2000).

II. Admissibility of Wilks’s California Conduct

Wilks relatedly challenges the admissibility of the evidence concerning his drug activity that took place after McDowell was arrested in 2018. He claims that this conduct was not in furtherance of the charged conspiracy and was thus inadmissible under Rules 403 and 404(b) of the Federal Rules of Evidence. We review the evidentiary challenge only for abuse of discretion, which is not evident here. *See United States v. Bankman-Fried*, 179 F.4th 104, 111 (2d Cir. 2026). As discussed above, the evidence of 2018–19 drug dealing was direct evidence of the charged conspiracy, and was thus not unfairly prejudicial or an “other” act within the meaning of Rule 404(b). *See United States v. Concepcion*, 983 F.2d 369, 392 (2d Cir. 1992) (“An act that is alleged to have been done in furtherance of the alleged conspiracy . . . is not an ‘other’ act within the meaning of Rule 404(b); rather, it is part of the very act charged.”).²

² Even if the evidence related to a separate conspiracy, and was deemed to be “other acts” within the meaning of Rule 404(b), it may very well have been admissible for other purposes such as to prove motive, opportunity, intent, preparation, plan, knowledge or identity. Fed. R. Evid. 404(b).

III. Sufficiency of the Evidence: Money Laundering

Count Four of the superseding indictment charged Wilks with conspiring with McDowell to commit money laundering offenses in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i), 1957(a), and 1956(h). On appeal, Wilks concedes that he laundered money but argues that the evidence was insufficient to demonstrate that he conspired with McDowell to do so. Because Wilks did not challenge the sufficiency of the evidence on this basis in the district court, the claim is reviewable only for plain error. *See, e.g., United States v. Jimenez*, 96 F.4th 317, 324 (2d Cir. 2024).

To establish a conspiracy to violate § 1956(a)(1)(B)(i), “the government must show that the defendant agreed 1) to conduct a financial transaction; 2) involving the proceeds of specified unlawful activity; 3) knowing that the property involved in the transaction represented the proceeds of some form of unlawful activity; and 4) knowing that the financial transaction was designed in whole or in part to conceal or disguise the nature, source, location, ownership, or control of those proceeds.” *United States v. Henry*, 325 F.3d 93, 103 (2d Cir. 2003).

Here, the trial evidence was sufficient to sustain Wilks’s conviction on Count Four. McDowell testified that, at Wilks’s direction, he paid Wilks for drug sales

via carefully structured bank deposits, and on one occasion, by a certified check made out to one of Wilks's aliases. The trial evidence also demonstrated that Wilks and McDowell jointly purchased a pickup truck, which they registered in the name of Wilks's cousin, and paid for with drug proceeds through a different third-party account. These are all "financial transactions" under 18 U.S.C. § 1956(c), knowingly funded with drug proceeds. See *United States v. Viserto*, 596 F.2d 531, 536 (2d Cir. 1979) (noting that "proof of the availability of cash by defendants with no legitimate occupation is permitted as tending to show that it was derived from ill-gotten gains"). The evidence, including the use of third-party accounts and structured deposits, supports the jury's finding that Wilks and McDowell engaged in these transactions with the intent to "conceal or disguise" the nature and source of the proceeds as set forth in 18 U.S.C. § 1956(a)(1)(B)(i). See, e.g., *Henry*, 325 F.3d at 104–05 (2d Cir. 2003) (affirming requisite "inten[t] to disguise the source of the cash" based on "the elaborate nature of the transactions," which included "exchanging illicit cash for cashier's checks" and registering "a limousine in [a co-defendant's] mother's name"); *United States v. Stephenson*, 183 F.3d 110, 120 (2d Cir. 1999) (affirming money laundering conviction where defendant's wife placed

drug proceeds in a safe deposit box held in her name “at [the defendant’s] direction so as to conceal it”).³

IV. Admissibility of Co-Conspirator Statements

Finally, Wilks challenges the admission of two groups of statements made by purported co-conspirators. Specifically, he challenges the admission of text messages between McDowell and Munn related to drug shipments and quality, and the admission of recorded prison calls between McDowell and his girlfriend, Patricia Saunders, where they discuss Wilks and McDowell’s joint purchase of the pickup truck. Wilks contends that the statements were inadmissible hearsay because, under Rule 801(d)(2)(E), there was insufficient evidence establishing that Wilks, Munn, and Saunders were in the same conspiracy, and that the court erred in failing to make an express finding that the requirements of Rule 801(d)(2)(E) were met, as required by *United States v. Geaney*, 417 F.2d 1116, 1120 (2d Cir. 1969). We review Wilks’s challenge for plain error because, although instructed by the

³ Because this evidence was sufficient to support a conspiracy to violate § 1956(a)(1)(B)(i), we need not reach whether the evidence also supported a conspiracy to violate § 1957(a). See *Berger*, 224 F.3d at 113 (noting that the government must show “that each defendant knowingly participated in a scheme to achieve” “one of the objectives charged in the indictment”).

court to object when the statements were offered into evidence, he failed to do so. *See United States v. Cummings*, 858 F.3d 763, 771 (2d Cir. 2017).⁴

As to Munn’s statements, Wilks’s challenge fails because the evidence was admissible under Rule 801(d)(2)(E). *See United States v. Tracy*, 12 F.3d 1186, 1196 (2d Cir. 1993) (setting forth the requirements of Rule 801(d)(2)(E)). The court could reasonably find that Munn and Wilks were members of the same conspiracy based on McDowell’s testimony that Munn “was one of the main guys that helped move the heroin,” App’x 886, that McDowell told Wilks of Munn’s assistance, and because Wilks himself asked McDowell, on a recorded prison call, if “Unc is good,” App’x 921, which McDowell confirmed was a reference to his uncle, Michael Munn. Moreover, the statements Wilks objects to—where McDowell texts Munn an address to pick up drugs shipped by Wilks, and Munn later responds to confirm the quality of the drugs—were both made during and in furtherance of the conspiracy because they were “designed to induce [Munn’s] assistance” and

⁴ Although Wilks moved to preclude co-conspirator statements *in limine*, the court conditionally admitted the statements subject to further connection at trial, and expressly instructed Wilks to renew his objection when the evidence was offered and at the close of the government’s case. Wilks forfeited the present challenge by failing to renew his objection. *See ABKCO Music, Inc. v. Sagan*, 50 F.4th 309, 324 (2d Cir. 2022) (“An evidentiary issue is preserved *in limine* only if it was (among other things) ruled upon by the court without equivocation.” (internal quotation marks omitted)).

“apprised [McDowell] of the progress of the conspiracy.” *United States v. Paone*, 782 F.2d 386, 391 (2d Cir. 1986). The court did not err in failing to make these findings on the record because Wilks did not timely object and because the admissibility of the statements is readily apparent. *See United States v. Perez*, 702 F.2d 33, 36 (2d Cir. 1983) (“[W]here the record indicates it to be appropriate, an implicit *Geaney* ruling can be inferred in the trial judge’s decision to receive the evidence and to deny a directed verdict of acquittal on the conspiracy charge.”). Thus, their admission was not error, much less plain error.

As for the admission of Saunders’s statements, Wilks cannot demonstrate the prejudice to “substantial rights” or to the “fairness, integrity or public reputation” of the judicial proceedings necessary to demonstrate plain error. *United States v. Agrawal*, 726 F.3d 235, 242 (2d Cir. 2013) (internal quotation marks omitted). His claim that Saunders and McDowell’s discussion of the pickup truck, furnished the only connection between McDowell and Wilks as to the money laundering conspiracy is belied by the record. McDowell testified that he paid for half the truck and that he knew it was registered in the name of Wilks’s family member. As noted above, the jury also heard independent evidence of Wilks’s participation in the charged money laundering conspiracy, including structured

bank deposits and a cashier's check to Wilks's alias accounts. Accordingly, Wilks's challenge fails because he cannot show that any evidentiary error in admitting Saunders's hearsay statements was "sufficiently great such that there is a reasonable probability that the jury would not have convicted him absent the error." *United States v. Marcus*, 628 F.3d 36, 42 (2d Cir. 2010).

We have considered the remaining arguments and conclude they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court