

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. : No. 09-356
 :
 ANTWAN SHAIRD :

MEMORANDUM

Juan R. Sánchez, J.

February 1, 2011

On February 12, 2010, a jury found Defendant Antwan Shaird guilty of possession of marijuana with the intent to distribute, in violation of 21 U.S.C. § 841, possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). Shaird now asks this Court for a judgment of acquittal on all counts of the indictment, an arrest of judgment on the § 922(g)(1) count, or a new trial. Because the Government's evidence was sufficient to prove all charges beyond a reasonable doubt, the Third Circuit has upheld the constitutionality of the felon-in-possession statute, and the verdict was not contrary to the weight of the evidence, Shaird's omnibus motion is denied.

FACTS

On February 7, 2009, officers of the First Judicial District Warrant Unit arrived at a residence on Beachwood Street in Philadelphia, to execute a bench warrant for Shaird. The officers surrounded the house and Investigator Charles Zul positioned himself in the backyard while the other Warrant Unit members knocked on the front door and announced themselves. After officers knocked, Shaird immediately fled from the back door, nearly colliding with Zul. Upon seeing Zul, Shaird retreated into the house. Zul followed Shaird and saw him run to the basement door, remove

a black handgun from the waistband of his pants, and throw it down the basement stairs. Zul radioed the other Unit members, who forcibly entered the house to ensure Zul's safety.

Shaird ran to the second floor of the residence and attempted to escape, but he was eventually apprehended. Officers found two other individuals in the house, Reginald Blackman and Tyree Smith, who were both detained and later released. Once Shaird was in custody, Officer Zul went to the basement of the house, and recovered a loaded Cobra Enterprises .38 caliber semi-automatic pistol. Officers also recovered thirty-five plastic bags containing marijuana, which were in plain view on top of a desk in the living room. The next day, Philadelphia Police Detective John Frei searched the house pursuant to a warrant and found two digital scales, a box of sandwich bags, and four pieces of mail addressed to Shaird near the desk upon which the thirty-five bags of marijuana had been found.

DISCUSSION

Shaird first asks this Court to enter a judgment of acquittal on all counts of the Indictment pursuant to Federal Rule of Criminal Procedure 29, which mandates a judgment of acquittal when “the evidence [at trial] is insufficient to sustain a conviction.” In reviewing a challenge to the sufficiency of evidence, this Court views the evidence in the light most favorable to the Government and will sustain the jury's verdict if a reasonable jury could find guilt beyond a reasonable doubt. *United States v. Vosburgh*, 602 F.3d 512, 537 (3d Cir. 2010). As part of this review, a court must “examine the totality of the evidence, both direct and circumstantial,” *United States v. Starnes*, 583 F.3d 196, 206 (3d Cir. 2009) (citation omitted), but must not consider witness credibility or weigh the evidence. *United States v. Jones*, 566 F.3d 353, 361 (3d Cir. 2009). To uphold a conviction in the face of a Rule 29 challenge, “[t]he evidence need not unequivocally point to the defendant's guilt

as long as it permits the jury to find the defendant guilty beyond a reasonable doubt.” *United States v. Pungitore*, 910 F.2d 1084, 1129 (3d Cir. 1990).

To uphold Shaird’s conviction for possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1), the government must have proven “the defendant (1) knowingly possessed a controlled substance with (2) the intent to distribute it.” *United States v. Iglesias*, 535 F.3d 150, 156 (3d Cir. 2008) (citations omitted). The government can prove both possession of a controlled substance and intent to distribute such substance through circumstantial evidence. *United States v. Johnson*, 302 F.3d 139, 149 (3d Cir. 2002). Shaird does not dispute he possessed the marijuana at issue in this case. Rather, he argues the marijuana was for his personal use, and he is entitled to acquittal because the Government failed to prove his intent to distribute the marijuana. This contention is without merit because the evidence at trial was sufficient to sustain a finding of Shaird’s intent to distribute. When Shaird was arrested, officers seized a bag containing approximately 6.1 grams of marijuana and 35 small bags, each containing about .56 grams of marijuana. Officers also recovered two digital scales and a box of sandwich bags near where the drugs were recovered. When officers asked Shaird whether there were any scales or drug packaging materials in the house, he said, “[t]here was a scale. I don’t know if it’s still there. No, there wasn’t a scale in the house.” Statement of Shaird 5, ECF No. 19. After hearing this equivocal statement, the jury could infer Shaird knew the scales were in the house and used them to package the drugs. Additionally, when asked why he ran from the police, Shaird explained he thought the officers were members of the narcotics strike force raiding his house. Shaird’s belief that the most likely reason police officers would come to his residence was to execute a drug bust shows his awareness of his guilt and intent to distribute marijuana.

In addition, the Government presented the testimony of Detective Christopher Lee, an expert in the field of drug trafficking, who explained the significance of the evidence recovered at Shaird's residence. Although Detective Lee acknowledged the amount of marijuana found was relatively small, and not sufficient to support an automatic inference of drug trafficking, he explained the nature of the marijuana's packaging – divided into 35 small bags – was significant because it was unlikely that Shaird purchased 35 small bags of marijuana for his personal use. Detective Lee explained it is more expensive to buy marijuana in small, pre-packaged bags than to buy it in bulk and stated, "there's no reason to have your marijuana, and then take it home and put it in small baggies like this. These are basically retail units. This is what is sold on the streets of Philadelphia [every day]." Trial Tr. 32:15-19, Feb. 12, 2010. The jury could infer from this testimony and the packaging that Shaird bought the drugs in bulk and then divided them into smaller bags as part of his intent to distribute.

This inference was further supported by the presence of two digital scales in the house, one of which had a capacity of 100 grams and could measure to the hundredth of a gram and the other of which could hold 500 grams and measure to the tenth of a gram. Detective Lee explained the presence of digital scales capable of such precise and small measurements was consistent with drug distribution activity. Shaird's intent to distribute marijuana was further supported by his possession of a firearm. Detective Lee explained drug users typically do not carry firearms whereas drug distributors are more likely to carry weapons to protect themselves and their drug supply because they cannot call the police if they are robbed. Finally, Detective Lee's opinion as to whether Shaird's activity was consistent with a person who intended to distribute drugs was influenced by Shaird's reaction when the Warrant Unit arrived at his home. When the Unit announced itself as the police,

Shaird thought it was the drug task force. Detective Lee explained the Narcotics Task Force of the Philadelphia Police Department does not target mere users, and would only conduct a raid of a drug distributor's residence. The jury could draw the inference Shaird was aware of this fact and conclude Shaird's initial assumption he was being raided by a narcotics unit shows his consciousness of guilt and supports the conclusion he was engaged in marijuana distribution. Viewing the evidence in the light most favorable to the Government, the jury had a reasonable basis to conclude Shaird intended to distribute the marijuana found at his residence.

To uphold Shaird's conviction for possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c), "the Government must [have] show[n] that the firearm was possessed by the defendant to advance or promote criminal activity." *United States v. Bobb*, 471 F.3d 491, 496 (3d Cir. 2006). To prove the firearm promoted illegal drug distribution, the Government was required to prove Shaird (1) possessed marijuana with the intent to distribute; (2) knowingly possessed a firearm; and (3) knowingly possessed the firearm in furtherance of the illegal drug trafficking activity. *Id.*

The Government proved Shaird possessed marijuana with intent to distribute. In support of the second element, Government witness Officer Zul testified he saw Shaird in possession of the handgun before Shaird threw it down the stairs of his residence. Additionally, Shaird admitted possession in a letter he wrote in which he stated, "[a]s fars [sic] my case go boo I go[t] a 80% chance of beaten [sic] my case without that money[.] They can't prove they case, all they can get me with is that g - - you put two together you smart enough baby." Shaird's Letter 3, ECF Document No. 39. Following admission of this letter, the Government suggested, and the jury could easily have concluded, that "g - -" referred to a gun, namely the firearm Officer Zul saw in Shaird's

possession and control. Based on Officer Zul's testimony and Shaird's prison letter, the Government submitted sufficient evidence to prove Shaird knowingly possessed the firearm at issue in this case.

To prove the third element, the Government must present evidence which shows more than mere possession of a firearm concurrent with drug distribution activity. *United States v. Sparrow*, 371 F.3d 851, 853 (3d Cir. 2004). Shaird argues the Government failed to prove the "in furtherance" prong, relying on *United States v. Iiland*, 254 F.3d 1264, 1274 (10th Cir. 2001), in which the Tenth Circuit reversed a § 924(c) conviction for insufficiency of the evidence because the government did not establish a connection between the drugs and the firearm at issue. Not only is *Iiland* not controlling law, but the circumstances of that case were markedly different because the firearm was found in the defendant's residence while the drugs he possessed were stored in a separate storage unit which the defendant had rented. *Id.* at 1268. No evidence was presented showing the drugs and gun were ever in the same location or showing the defendant kept the gun accessible while engaging in drug trafficking activities. *Id.* at 1274. In these circumstances, the Tenth Circuit held there was insufficient evidence to conclude the defendant's drug possession "furthered, promoted or advanced his illegal drug activity." *Id.* In the instant case, the Government showed far more than mere possession, proving Shaird possessed an easily accessible, loaded firearm in the same house where the marijuana and drug packaging materials were found. This was sufficient to prove Shaird possessed the gun in furtherance of his drug trafficking activity. *See United States v. Loney*, 219 F.3d 281, 289 (3d Cir. 2000) ("A weapon's physical proximity to narcotics may be sufficient to provide the nexus required between the weapon and the drug charges." (citation omitted)).

Moreover, in determining whether the Government proved a nexus between Shaird's firearm possession and his underlying drug trafficking offense, this Court considers the following non-

exclusive factors:

the type of drug activity that is being conducted, accessibility of the firearm, the type of weapon, whether the weapon is stolen, the status of the possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.

Id. (citations omitted). All of these factors support the conclusion Shaird possessed the gun “in furtherance” of his drug distribution activity. Shaird was weighing and packaging marijuana with his firearm secured in the waistband of his pants where it was readily accessible to him. The weapon was a loaded semi-automatic pistol, which Shaird illegally possessed because, as a convicted felon, he is prohibited from owning firearms. The firearm was near the drugs, which were found in the dining room of the residence, the same room Shaird ran through before throwing the firearm down a flight of stairs. Finally, the gun was found, along with the marijuana, in connection with Shaird’s arrest. The Government established a nexus between Shaird’s firearm possession and his drug trafficking activity, satisfying the third element for conviction under 18 U.S.C. § 924(c).

To uphold Shaird’s conviction for being a convicted felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (hereinafter the felon-in-possession offense), the Government was required to prove Shaird: (1) had been convicted of a crime punishable by imprisonment for more than one year; (2) knowingly possessed a firearm; and (3) the firearm he possessed had traveled in interstate commerce. *See* 18 U.S.C. § 922(g)(1). Shaird challenges the constitutionality of § 922(g)(1) on its face and as applied to him, arguing the statute exceeds Congressional authority under the Commerce Clause of the Constitution. Shaird, however, concedes the Third Circuit has consistently upheld the constitutionality of § 922(g)(1),¹ but asks this Court to find § 922(g)

¹ *See United States v. Gateward*, 84 F.3d 670 (3d Cir. 1996) (holding § 922(g)(1) is a valid exercise of the commerce power because it was drafted to include a jurisdictional element which requires the

unconstitutional in light of *United States v. Morrison*, 529 U.S. 598 (2000), and *Jones v. United States*, 529 U.S. 848 (2000). The Third Circuit, however, has revisited the issue of § 922(g)'s constitutionality in light of both cases and rejected the same arguments Shaird now raises. See *United States v. Singletary*, 268 F.3d 196, 205 (3d Cir. 2001) (revisiting *Gateward* and affirming § 922(g)'s constitutionality in light of *Morrison* and *Jones*). *Singletary* remains the law in this Circuit, as conceded by defense counsel in his brief and at oral argument. Def.'s Br. 16 n.4 (noting *Gateward* is determinative, but preserving constitutionality claim for appeal). Because *Singletary* is binding, Shaird's facial challenge to § 922(g) is denied.

Shaird next argues the felon-in-possession statute is unconstitutional as applied to him, asserting the Government did not show the firearm he possessed *substantially* affected interstate commerce. The Government, however, was not required to meet such a high standard of proof. Rather, to satisfy the interstate commerce element, the Government only needed to show the firearm at issue moved in interstate commerce "at some point in the distant past." *Singletary*, 268 F.3d at 205. This burden is satisfied with evidence showing the defendant possessed the firearm in a state other than the state in which it was manufactured. *United States v. Shambry*, 392 F.3d 631, 635 (3d Cir. 2004). Here, the Government called a firearms expert, Special Agent Barry Deprosperis from the Bureau of Alcohol, Tobacco, and Firearms, who testified the firearm Shaird possessed was manufactured in either Utah or Montana. Because Shaird possessed the firearm in Pennsylvania, it necessarily moved in interstate commerce at some point, and the Government proved the "in or affecting interstate commerce" element of § 922(g)(1).

Next, Shaird moves for an arrest of judgment on the felon-in-possession count of the

subject firearm to have traveled "in or affecting interstate commerce").

indictment pursuant to Federal Rule of Criminal Procedure 34, which authorizes a court to arrest judgment if “(1) the indictment or information does not charge an offense; or (2) the court does not have jurisdiction of the charged offense.” Shaird argues this Court does not have jurisdiction over the charged offense because the indictment does not sufficiently allege a nexus with interstate commerce, and argues his own possession was merely intrastate. However, the Third Circuit has made clear that § 924(c) is constitutional because it has the requisite jurisdictional element requiring the firearm to have moved in interstate commerce. *Singletary*, 268 F.3d at 205. Moreover, this element is satisfied so long as the firearm has moved in interstate commerce “at some point in the distant past.” *Id.* The indictment was not required to allege Shaird’s conduct “substantially” affected interstate commerce, and charging possession of a firearm which had moved in interstate commerce is sufficient to establish jurisdiction. Shaird’s motion for an arrest of judgment is denied.

Finally, Shaird asks for a new trial pursuant to Federal Rule of Criminal Procedure 33, which authorizes a court to vacate a judgment and grant a new trial “if the interest of justice so requires.” Shaird argues he is entitled to a new trial because the verdict was against the weight of the evidence on all three counts of the indictment, and evidentiary errors and improper statements by the prosecutor in his closing warrant a new trial. “[M]otions for a new trial based on the weight of the evidence are not favored” and are “granted sparingly and only in exceptional cases.” *United States v. Brennan*, 326 F.3d 176, 189 (3d Cir. 2003) (citation omitted). After evaluating such a motion, a court can order a new trial only if it finds “there is a serious danger that a miscarriage of justice has occurred – that is, that an innocent person has been convicted.” *Id.* at 189 (citation and internal quotation marks omitted). Here, the jury’s verdict was consistent with the weight of the evidence. Shaird was arrested pursuant to a bench warrant, following his flight from his residence, which contained approximately

25 grams of marijuana, most of which was packaged in 35 small plastic bags; two precision digital scales; and additional bags in close proximity to the drugs. Although Shaird argues this evidence is insufficient to show his intent to distribute without direct evidence showing he personally packaged the drugs, such evidence was not necessary to sustain a conviction.

Shaird also argues his felon-in-possession conviction was against the weight of the evidence, asserting there was insufficient evidence proving he possessed the gun. This Court disagrees. Investigator Zul saw Shaird remove the handgun from his waistband and Shaird wrote a letter from prison which contained a thinly-veiled reference to the fact officers caught him in possession of a gun. Shaird argues this Court should reject that evidence because it is inconsistent with the testimony of other witnesses and with questions the Warrant Unit asked following Shaird's arrest. First, he argues another individual present in the residence, Reginald Blackman, contradicts Officer Zul's testimony because Blackman stated he could see Shaird at the same time Officer Zul reported seeing Shaird throw the gun, but testified he never saw Shaird with a gun that evening. Shaird further asserts the firearm recovered belonged to a man named "Rocco" who was at the house when the warrant unit arrived, but who "got away." The law enforcement officers, however, stated only three people were in the residence, neither Blackman nor Tyree Smith, the other man arrested at the residence, mentioned "Rocco" to the police, and the sole evidence that "Rocco" was in the house or owned the gun is Shaird's self-serving statement. This statement is not enough to show the verdict was against the weight of the evidence.

Shaird also argues Zul's testimony was not credible because Blackman claims police asked

him multiple times following his arrest to whom the gun belonged and whether it was his.² Shaird argues this questioning demonstrates the officers were not certain whether the firearm belonged to Shaird, and shows Officer Zul's testimony was not credible. Even if this Court accepts such questioning took place, this evidence does not undermine Officer Zul's credibility because questions regarding gun ownership and possession are part of a thorough investigation, especially considering Shaird's status as a convicted felon precluded him from legal gun ownership. Shaird next argues he is entitled to a new trial because his conviction for possession of a firearm in furtherance of a drug trafficking offense is against the weight of the evidence. As previously explained, Officer Zul's testimony regarding Shaird's handling of the firearm and the factors articulated in *Sparrow* support a conclusion Shaird possessed the firearm at issue and used it in furtherance of his drug trafficking offense.

Shaird also contends a new trial is necessary because the Government referred to facts not in evidence during its closing argument. Shaird objects to the following statement:

What did Investigator Zul tell you he did afterwards[?] He said that he went to that basement door and stood guard over that area. He also told you that he radioed the other officers. [“]Primary going back in, he's got a gun.[”] And you heard Sergeant Fusetti testify that he heard that, they immediately made entrance.

Trial Tr. 103:5-10, Feb. 12, 2010. Shaird argues this statement was improper because Sergeant Fusetti did not testify to the content of Officer Zul's radio message because such testimony was precluded by a hearsay objection. During the closing argument, Shaird's counsel objected to this statement, asserting the fact was not in evidence. The Court instructed the jury to independently recall what the evidence was, and the prosecutor continued:

² Blackman testified that Detective Zanetich questioned him about ownership of the gun, but Detective Zanetich denies this.

Of course, it's your province as a jury to take in the evidence that they said. And if you feel that I absentmindedly misstated something of course what everyone said on that stand should control your deliberation process. And if I say something differently it[']s] no[t] purposeful, I've been sitting here listening to the testimony as well as you have. But you heard Sergeant Fusetti [hear] that come over the radio.

Trial Tr. 103:14-22, Feb. 12, 2010. Because of the prosecutor's statement, Shaird contends he is entitled to a new trial.

A court will only grant a new trial based on evidentiary errors if the errors, taken together, "so infected the jury's deliberations that they had a substantial influence on the outcome of the trial." *United States v. Thornton*, 1 F.3d 149, 156 (3d Cir. 1993) (citation omitted). A criminal conviction will not be overturned on the basis of a prosecutor's closing argument statements alone, because a "prosecutor is entitled to considerable latitude in summation to argue the evidence and any reasonable inferences that can be drawn from that evidence." *United States v. Lee*, 612 F.3d 170, 194 (3d Cir. 2010). Instead, a prosecutor's "statements or conduct must be viewed in context" to determine whether they affected the fairness of the trial. *Id.* (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)). To decide whether the prosecutor's closing argument comments warrant a new trial, this Court considers "the scope of the objectionable comments and their relationship to the entire proceeding, the ameliorative effect of any curative instructions given, and the strength of the evidence supporting the defendant's conviction." *United States v. Helbling*, 209 F.3d 226, 241 (3d Cir. 2000) (citation omitted). With respect to the strength of the evidence supporting the Government's case, as noted, Zul testified to seeing Shaird remove a firearm from his waistband. This testimony, if believed, was sufficient to prove Shaird's possession beyond a reasonable doubt. Shaird objects not to this direct evidence, but to the circumstantial evidence that Zul's firsthand observations were corroborated by what he told the other officers over the radio.

Zul testified that, after he saw Shaird with the firearm, he radioed the other officers. Zul did not reveal the contents of the transmission because this Court sustained Shaird's hearsay objection. Next, Fusetti testified to having heard the transmission. Although he also did not reveal the content of Zul's radio communication, Fusetti stated, after hearing the transmission, "[f]or [Zul's] safety and from the information that came over the radio, I instructed my officers to make forcible entry into the house to ensure Officer Zul's safety." Trial Tr. 107:13-15, Feb. 9, 2010. Based on this statement, the jury could reasonably infer that Zul's communication made Fusetti fear for Zul's safety and, because Zul had already testified to seeing the gun and radioing the other officers, the jury could reasonably conclude Zul told Fusetti and the rest of the Warrant Unit that Shaird had a firearm. The prosecutor's statements drew an inference that, even if improper, was a reasonable inference for the jury to draw, and these statements did not substantially affect the outcome of the trial. Moreover, as previously discussed, the jury saw a letter Shaird wrote while in custody, in which he made a thinly-veiled admission to possessing a firearm. Accordingly, it is highly unlikely the jury's verdict was affected by the Government's brief statement in closing,³ and Shaird's motion is denied.

Shaird's final argument for a new trial is that the Government's expert witness, Detective

³ In addition, following the prosecutor's improper statement, this Court instructed the jurors that their own recollections should control, and the prosecutor sought to neutralize his statement by apologizing for any misstatement and reaffirming that the jury's recollection of facts was controlling. A jury is presumed to follow an instruction unless "there is an overwhelming probability that the jury will be unable to follow [it], and a strong likelihood that the effect of the evidence would be devastating to the defendant." *Thornton*, 1 F.3d at 157 (quoting *Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987)). This Court's instruction cured any prejudice from the comment. See *United States v. Reilly*, 33 F.3d 1396, 1421 (3d Cir. 1994) (holding a court's instruction to the jury to rely on their recollection of the facts cured any prejudice which resulted from a prosecutor's misstatement of the record).

Lee, exceeded the bounds of acceptable expert testimony by repeating the testimony of Zul and Fusetti. Detective Lee listened to the testimony in the case and Shaird concedes Lee was permitted to tell the jury which facts he relied upon in reaching his conclusion, but argues under Federal Rule of Evidence 703, Lee should not have been permitted to disclose inadmissible facts on which he based his conclusion. Specifically, Shaird objects to Lee's testimony in which he explained his conclusion about Shaird's intent to distribute and stated, "it's telling what the sergeant said when he came in. He said he spoke to Zul and that Zul immediately took up a position." Trial Tr. 35, Feb. 12, 2010. Shaird's counsel made a hearsay objection, which was overruled, and Detective Lee stated, "[Fusetti] said that Zul immediately took up a position covering the basement. Didn't know if anybody was down there. Knew the defendant had thrown a gun down there." *Id.* Shaird's counsel objected again, stating, "[t]hey're trying to put in evidence from other witnesses." *Id.* This Court overruled the objection, ruling that as an expert witness, Lee could disclose the basis for his opinion. Detective Lee then stated, "[a]nd that was all fairly immediate. He didn't find the gun and say to the sergeant ten/fifteen/twenty minutes later. Oh, yeah, I saw him throw that. We're talking about -." Trial Tr. 35, Feb. 12, 2010. Shaird's attorney objected, stating, "[h]e's just—he's testifying for the other witness, Your Honor. I object to this whole line." *Id.*

Shaird argues this testimony should have been barred by Federal Rule of Evidence 703, which provides, in part: "[f]acts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect." Fed. R. Evid. 703. Detective Lee, an expert in narcotics, offered an opinion about whether Shaird intended to distribute the marijuana. In coming to that conclusion, he relied upon, *inter alia*,

Shaird's possession of a gun – a fact he learned from the officers' trial testimony. Shaird argues, despite Lee's reliance on such testimony, Lee introduced an inadmissible fact because he testified to Zul's radio statement which was previously precluded by a hearsay objection. Detective Lee, however, did not testify to Officer Zul's radio communication. Instead, he repeated the fact that Sergeant Fusetti spoke to Officer Zul, and that Fusetti knew Shaird threw a gun down the stairs. Because this testimony did not include the contents of Officer Zul's radio communication, Lee did not introduce inadmissible hearsay evidence. Moreover, even if he did testify to inadmissible hearsay, for the same reasons discussed above, such disclosure did not harm Shaird because it did not substantially affect the outcome of his trial.

Shaird also argues Detective Lee's testimony should have been excluded as duplicative under Federal Rule of Evidence 403, although he did not make this argument at trial. Not only has Shaird waived his Rule 403 argument by failing to raise it at trial, but even if such an objection was made, this Court would have permitted Lee's testimony because, on balance, it was not more prejudicial than probative. Sergeant Fusetti's knowledge of Shaird's firearm possession had already been elicited, and Officer Zul had already said he took up a position guarding the basement door. Moreover, Detective Lee's testimony was a relatively minor part of the trial insofar as his testimony was brief and the Government moved into other areas following defense counsel's objection. Shaird's motion for a new trial based on Detective Lee's expert testimony is denied.

Shaird next argues Detective Lee's testimony was improper because he was "parroting" the ideas of others. "Parroting" occurs when an expert witness offers the assertions or conclusions of another witness without the expertise to independently verify that conclusion. *See Daura Auto. Sys. of Ind., Inc. v. CTS Corp.*, 285 F.3d 609, 613-14 (7th Cir. 2002) ("A scientist, however well

credentialed he may be, is not permitted to be the mouthpiece of a scientist in a different specialty.”); *In re Wagner*, No. 06-01026, 2007 WL 966010, at *4 (E.D. Pa. Mar. 29, 2007) (holding expert’s testimony was proper even though he relied on another’s conclusions because he independently verified those conclusions). In the instant case, Detective Lee did not repeat another expert’s conclusion. Instead, he restated their observations to explain the basis for his opinion and did not engage in parroting.

Because Shaird’s arguments for a judgment of acquittal, arrest of judgment, and a new trial are not meritorious, his omnibus motion is denied. An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 : :
 : :
 : No. 09-356
 : :
ANTWAN SHAIRD : :

ORDER

AND NOW, this 1st day of February, 2011, it is ORDERED Defendant Antwan Shaird's Motion for Judgment of Acquittal and Arrested Judgment or New Trial Pursuant to Rules 29, 34 and 33 of the Federal Rules of Criminal Procedure (Document 64) is DENIED.

BY THE COURT:

/s/ Juan R. Sánchez
J u a n R . S á n c h e z , J .