

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

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL ACTION
 :
 MALIK MARTIN : NO. 16-218-12
 :

MEMORANDUM

SURRICK, J.

MARCH 30, 2020

Presently before the Court are Defendant’s Motion for a Judgment of Acquittal, or Alternatively, for a New Trial (ECF No. 879), and Defendant’s Supplemental Rule 29 and 33 Motions (ECF No. 901). For the following reasons, Defendant’s Motions will be denied.

I. BACKGROUND

On August 9, 2017, a grand jury returned a Second Superseding Indictment charging Defendant with: conspiracy to distribute 1,000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A) (Count 1); and two counts of conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and 1956(a)(1)(B)(i) and (h) (Counts 9, 10). (ECF No. 302.) On October 23, 2018, after a three-week trial, a jury found Defendant guilty of the drug conspiracy and one count of money laundering conspiracy (Count 9). Defendant was found not guilty of the other count of money laundering conspiracy (Count 10). (ECF No. 804.) Defendant was tried along with one of his coconspirators, Alan Womack.¹ The convictions relate to Defendant’s involvement in a conspiracy to transport bulk amounts of marijuana from the west coast to locations on the east coast. Defendant and his co-conspirators employed truck drivers to transport large amounts of money to the west coast and to bring

¹ The jury was deadlocked as to the drug and conspiracy charges against Womack and a mistrial resulted. (ECF No. 805.) Womack was later retried and convicted. (ECF No. 936.)

truckloads of marijuana back to the east coast. The Government presented approximately 40 witnesses and over 400 exhibits to support its case that Defendant was a member of the drug conspiracy, which spanned from spring 2005 through May 2016. Defendant concedes that he was at one time a member of the conspiracy to distribute marijuana. He testified at his trial that his role was to “situate” the marijuana, or to “prepare” it for travel, which included unwrapping bundles, weighing them, and rewrapping them. (Oct. 16, 2018 Tr. 182, 208, ECF No. 825.)

However, Defendant contends that he affirmatively withdrew from the conspiracy sometime prior to August 2012. (*Id.* at 193-94.) The statute of limitations for this case was August 9, 2012. Clearly, the jury did not believe Defendant’s withdrawal defense and he was found guilty of the drug conspiracy count and one money laundering count. Defendant now contends that he is entitled to an acquittal, or in the alternative, a new trial. There is no justification for either.

II. LEGAL STANDARDS

Defendant seeks an acquittal under Federal Rule of Criminal Procedure 29. In the alternative, he seeks a new trial under Federal Rule of Criminal Procedure 33.

Rule 29 permits the court to set aside a guilty verdict based on insufficient evidence. *See* Fed. R. Crim. P. 29(a)-(c). When presented with a Rule 29 motion, the court must “review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt.” *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 430 (3d Cir. 2013) (citation omitted). Evidence is viewed as a whole and “not in isolation.” *Id.* In addition, there must be “substantial evidence” to uphold the jury’s decision on guilt. *Id.* The court “must be ever vigilant in the context of [Rule 29] not to usurp the role of the jury by weighing credibility and assigning weight to the evidence, or by

substituting its judgment for that of the jury.” *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005). “A finding of insufficiency should be confined to cases where the prosecution’s failure is clear.” *Id.* (citation and internal quotation marks omitted).

Rule 33 permits a court to vacate any judgment and grant a new trial “if the interest of justice so requires.” Fed. R. Crim. P. 33(a). District courts should only grant a new trial when an error or errors that occurred during the trial “so infected the jury’s deliberations that they had a substantial influence on the outcome of the trial.” *United States v. Copple*, 24 F.3d 535, 547 n.17 (3d Cir. 1994) (citation omitted).

III. DISCUSSION

Defendant raises two arguments in support of a judgment of acquittal. First, he contends that he successfully proved to the jury by a preponderance of the evidence that he withdrew from the conspiracy more than five years before the Indictment was filed against him. (Def.’s Mem. ECF No. 879.) Defendant also argues that there was insufficient evidence of a conspiracy that involved the distribution of 1,000 kilograms of marijuana in a single unit. (*See* Def.’s Supp. Mem., ECF No. 901.)

In the alternative, Defendant contends that he is entitled to a new trial based on prosecutorial misconduct. He argues that Government Counsel elicited improper testimony from one of its key witnesses and admitted into evidence misleading and prejudicial charts summarizing evidence.

A. Substantial Evidence Supports the Convictions

Defendant argues that a judgment of acquittal is required on both conspiracy counts because he proved to the jury by a preponderance of the evidence that he withdrew from the conspiracy more than five years before the original Indictment was filed against him on August

9, 2017. See 18 U.S.C. § 3282 (noting five-year statute of limitations).² In other words, he argues that there was insufficient evidence in the record showing that he was a part of the conspiracy within the limitations period.

A defendant charged with conspiracy is liable for his acts and the acts of his coconspirators for as long as the conspiracy continues, unless he can prove that he withdrew from the conspiracy prior to its termination. *United States v. Kushner*, 305 F.3d 194, 198 (3d Cir. 2002); *Smith v. United States*, 568 U.S. 106, 107 (2013) (“Upon joining a criminal conspiracy, a defendant’s membership in the ongoing unlawful scheme continues until he withdraws.”).³ “[I]f a defendant properly and adequately terminates his or her involvement with the conspiracy, he or she no longer can be held responsible for acts of his or her co-conspirators and the statute of limitations begins to run in his behalf.” *United States v. Antar*, 53 F.3d 568, 582 (3d Cir. 1995). The burden is on the defendant to prove by a preponderance of the evidence that he withdrew from the conspiracy. *Smith*, 568 U.S. at 110.

To prove withdrawal, it is not enough for the defendant to show that he ceased engaging in criminal activity. *Kushner*, 305 F.3d at 198. Rather, “[t]he defendant must present evidence

² Although Defendant contends that acquittal is warranted on both counts, he does not present any arguments about the sufficiency of the evidence underlying the money laundering conviction. His arguments and references to evidence relate exclusively to the drug conspiracy. Therefore, our analysis will focus on the drug conspiracy conviction.

³ In *Smith*, the Supreme Court explained the rationale for a defendant’s continuing liability in a conspiracy:

Having joined forces to achieve collectively more evil than he could accomplish alone, [the defendant] tied his fate to that of the group. His individual change of heart (assuming it occurred) could not put the conspiracy genie back in the bottle. We punish him for the havoc wreaked by the unlawful scheme, whether or not he remained actively involved.

Smith, 568 U.S. at 114.

of some affirmative act of withdrawal on his part, typically either a full confession to the authorities or communication to his co-conspirators that he has abandoned the enterprise and its goals.” *Antar*, 53 F.3d at 582. We consider first whether Defendant has “come forward with evidence evincing a prima facie showing of withdrawal.” *Id.* If he makes that showing, we consider next whether the Government adequately rebutted that prima facie case, “either by impeaching the defendant’s proof or by going forward with evidence of some conduct in furtherance of the conspiracy subsequent to the act of withdrawal.” *Id.* (quoting *United States v. Local*, 560, 974 F.2d 315, 338 (3d Cir. 1992)).

Consistent with these legal principles and Third Circuit Model Jury Instructions on the defense of withdrawal, the Court instructed the jury as follows:

Finally, ladies and gentlemen, the defendants here have each argued that they are not guilty of the conspiracy charged in the indictment because they withdrew from the conspiracy. . . . If you find that Malik Martin withdrew from the conspiracy before August 9, 2012, which was five years before the Government obtained the indictment charging the conspiracy, then you must find him not guilty of the conspiracy.

Now, ladies and gentlemen, you should understand that in order to withdraw from a conspiracy a defendant must have taken some clear, definite, and affirmative action to terminate his participation, to abandon the illegal objective and to disassociate himself from the agreement. Withdrawal, ladies and gentlemen, requires proof that the defendant changed his intent about participating in the agreement. If the evidence only shows that the defendant stopped activities in furtherance of the conspiracy or stopped cooperating with the conspiracy or merely was inactive for a period of time this is not enough to find that the defendant withdrew from the conspiracy. You should understand, ladies and gentlemen, that the defendant has the burden of proving by a preponderance of the evidence that he withdrew from the conspiracy before August 9, 2012.

(Oct. 17, 2018 Tr. 169-70, ECF No. 826 (quoting 3d Cir. Crim. Jury Ins. § 6.18.371J-2.)

Defendant contends that he proved by a preponderance of the evidence that he withdrew from the conspiracy. The only evidence that he offered in support of this was his own testimony that he called Jerome Woods, the head of the drug conspiracy, sometime in June of 2010 and told

him he “wanted to be done with it basically.” (Oct. 16 Tr. 193.) We need not decide whether Defendant’s self-serving and ambiguous testimony establishes his prima facie case because even if it does, the Government has offered substantial evidence that rebuts Defendant’s statement that he withdrew from the conspiracy.

First, the Government presented the testimony of tractor trailer driver Kevin Willoughby, who testified that in May of 2013, he drove Defendant and Jerome Woods from Philadelphia to Houston to purchase marijuana. (Oct. 2, 2018 Tr. 10-12, ECF No. 824.) Defendant refutes this evidence, contending that he flew to Houston to visit his girlfriend and not to purchase marijuana with Woods. (Oct. 16 Tr. 195.) Defendant also contends that the evidence is not reliable because Willoughby is not a credible witness in light of his prior convictions, one of which was for perjury, and evidence that he has previously lied under oath. (*See* Oct. 1, 2018 Tr. 43, 51, 208, 219, 224, ECF No. 823.)

Although Willoughby may not have been the Government’s most reliable witness, Defendant ignores the other evidence in the record that corroborates Willoughby’s testimony, such as evidence that placed Defendant with Woods in Houston at this time. The Government presented airline records showing that Woods flew from Houston to Philadelphia on May 15, 2013, and that Defendant flew from Houston to Arizona on May 16. (Gov. Exs. 161A, 161B.) The Government also presented evidence that Woods and Defendant rented a vehicle together in Houston from May 12-16, 2013. (Oct. 4, 2018 Tr. (AM), ECF No. 786; Gov. Ex. 177.)

In addition to evidence about the May 2013 trip to Houston, the Government also introduced evidence that Defendant was involved in the receipt of a large quantity of marijuana on July 17, 2014. Special Agent Desiree Maxwell, one of the law enforcement officers who investigated this case, monitored the events that took place on that day. (Oct. 4 Tr. (PM) ECF

No. 787.) She observed Defendant with Woods and another coconspirator, Joseph Akers, meeting up with tractor trailer driver Hosea Harvey at a Days Inn in Philadelphia. (Oct. 9, 2018 Tr. (AM) 69-73 76-78, 86-90, ECF No. 792.) She also observed boxes being transferred from the tractor trailer to a minivan. A series of photographs showed Defendant standing next to the minivan while a box was being loaded into it. (*Id.* at 86; Gov. Ex. 221.) Special Agent Kevin Lewis also testified with regard to phone records for this day. A summary chart that was admitted into evidence revealed that there were numerous telephonic contacts between Defendant, Akers, Woods, and Harvey on this day.

The only evidence that Defendant presented to contradict his involvement in this drug transaction was his own testimony. He testified that although he was present during the alleged marijuana transfer—indeed, the photographs show he was present—he was merely there visiting his friend, Akers, and not to assist in the drug transaction. (Oct. 16 Tr. 199-200.) He testified as follows:

Q. [Defense counsel:] Could you tell us what happened on that day [July 17, 2014]?

A. [Defendant:] Well, that day I was meeting Joseph Akers that day.

Q. And why were you meeting Joseph Akers?

A. Like I said we were close friends and he was just calling to tell me he was going to be in the area, I live close by there.

Q. Okay. And so what happened?

A. Well, he called and said he was going to be close by and I went to meet him. And when I went to meet him we talked and, you know, I guess they had pictures of us talking.

Q. You also saw a big truck out there.

A. Uh-huh.

Q. Did you have an idea of what was going on?

A. No, I mean, from being around marijuana before, you know, I kind of -- you can assume what's going on but as far as me knowing what actually was going on and knowing details, no.

Q. Okay. So you speak to Joseph Akers and then what happened?

A. And then I get in my car and I leave.

(*Id.*)

The Government's evidence was substantial. It not only impeached Defendant's version of the events, but also demonstrated that he continued to be actively involved in the conspiracy after his alleged withdrawal. *See United States v. Oppong*, 165 F. App'x 155, 161 (3d Cir. 2006) (finding that even if defendant met his prima facie case of withdrawal, the government offered sufficient rebuttal evidence, which included testimony that he did continue in drug activities). Based upon this evidence, a rational jury could have found the essential elements to convict Defendant of the conspiracy counts. We "presume that the jury has properly carried out its functions of evaluating credibility of witnesses, finding the facts, and drawing justifiable inferences." *United States v. Lacy*, 446 F.3d 448, 451 (3d Cir. 2006). By finding Defendant guilty of the drug and money laundering conspiracies, the jury obviously concluded that he did not meet his burden in establishing that he withdrew from the conspiracy. Defendant invites us to "usurp the role of the jury by weighing credibility and assigning weight to the evidence or by substituting [our] judgment for that of the jury." *Brodie*, 403 F.3d at 133. This we cannot do. Defendant's motion for a judgment of acquittal must be denied.

B. The Government Did Not Have to Prove 1,000 Kilograms was Distributed in a Single Unit

Defendant also argues that his convictions should be set aside because the Court did not instruct the jury that the Government must prove that Defendant conspired to distribute 1,000 kilograms of marijuana in a "single unit" as opposed to aggregating amounts of the drug over the duration of the conspiracy. The Court instructed the jury with respect to its determination of drug quantities as follows:

Now, ladies and gentlemen, the jury interrogatory for Count 1 asks you to determine the weight with a quantity of the marijuana which was involved in the conspiracy. The first question on the -- the first interrogatory asks you whether you unanimously find beyond a reasonable doubt that the weight or quantity of the marijuana that was involved in the conspiracy was 1,000 kilograms or more.

In making this decision you should consider all of the marijuana that the defendant himself actually possessed with the intent to distribute or distributed and intended to distribute, and all of the marijuana that the members of the conspiracy possessed with the intent to distribute, distributed, or intended to distribute, and which was reasonably foreseeable to the defendant.

(Oct. 17 Tr. 159-60 (quoting 3d Cir. Crim. Jury Ins. § 6.21.841C).)

Defendant contends that this instruction was given in error because it did not require the jury to find that Defendant specifically possessed 1,000 kilograms or more at one time. In support of this argument, Defendant relies on the recent case, *United States v. Rowe*, 919 F.3d 752 (3d Cir. 2019). In *Rowe*, the Third Circuit held that the quantities from separate drug transactions are not aggregated to determine the quantity for a substantive drug possession charge under 21 U.S.C. § 841(a). *Id.* at 759-61. The defendant in *Rowe* was charged with possession with intent to distribute 1,000 grams or more of heroin. The government did not present evidence that 1,000 grams was ever possessed in “a single unit,” and instead attempted to prove its case by combining several distributions. *Id.* at 756. The Third Circuit rejected the government’s aggregation attempts and reasoned that, although possession with intent to distribute is a “continuing offense,” that offense “begins when a defendant has the power and intention to exercise dominion and control over all 1000 grams, and ends when his possession is interrupted by a complete dispossession” *Id.*

Defendant’s reliance on *Rowe* is misplaced. Most notably, *Rowe* involved a possession with intent to distribute charge, and not a drug conspiracy charge. Defendant’s argument “confuses the relevance of evidence for a substantive offense, versus that for a conspiracy offense, which requires no completed act.” *United States v. Whitted*, 436 F. App’x 102, 104 (3d Cir. 2011). The rationale underlying the Third Circuit’s decision in *Rowe* to forbid aggregating separate drug transactions to determine the quantity element of a substantive possession charge

does not translate to the law of conspiracy. A conspiracy is a single unified offense. Under the law of conspiracy, “the jury [is required] to find only the drug type and quantity element as to the conspiracy as a whole, and not the drug type and quantity attributable to each co-conspirator.” *United States v. Phillips*, 349 F.3d 138, 142-43 (3d Cir. 2003); *see also United States v. Perez*, 280 F.3d 318, 353 (3d Cir. 2002) (“[T]he defendant is accountable for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of contraband that were within the scope of the criminal activity that he jointly undertook.” (quoting U.S. Sentencing Guidelines Manual § 1B1.3(a)(1) cmt. n. 2)). With these long-standing principles of conspiracy law in mind, the Third Circuit has rejected Defendant’s argument. *See United States v. Gori*, 324 F.3d 234, 237 (3d Cir. 2003) (noting that a “holding disallowing aggregation of multiple drug transactions for § 841(b) purposes did not extend to multiple drug transactions as part of a conspiracy”); *see also, e.g., United States v. Kendrick*, No. 17-143-4, 2019 WL 2248631, at *1-2 (W.D. Pa. May 17, 2019) (rejecting defendant’s argument that *Rowe* applies to drug conspiracy count for purposes of determining quantity of drugs involved in conspiracy); *United States v. Perrin*, No. 14-205-2, 2019 WL 3997418, at *2-4 (W.D. Pa. Aug. 23, 2019) (same).⁴

We note that even if *Rowe* did change the law as it applies to drug conspiracy charges, Defendant suffered no prejudice here. Defendant admitted that he was involved in a drug transaction involving over 1,000 kilograms of marijuana in a single unit. On March 25, 2006, law enforcement seized 2,332 pounds of marijuana (1,058 kilograms) hidden in a basement in West Philadelphia. When law enforcement arrived, Defendant fled on foot. (Oct. 16 Tr. 183.)

⁴ *Kendrick* is currently on appeal to the Third Circuit. *See United States v. Kendrick*, Case No. 19-2282 (3d Cir.).

Defendant does not dispute that he was involved in that drug bust. (*Id.*) For all of these reasons, Defendant's Motion for acquittal must be denied.

C. Prosecutor's Questioning of Special Agent Not Prejudicial

Defendant also argues that he is entitled to a new trial because the Government elicited improper testimony through one of its witnesses, Special Agent Desiree Maxwell. The Government's questioning of Special Agent Maxwell centered on a July 17, 2014 drug transfer involving Defendant and coconspirators (Jerome Woods, Joseph Akers, and Hosea Harvey) that was surveilled by the FBI. Defendant contends that the Government, through Special Agent Maxwell, insinuated that Defendant drove off in a white minivan containing a bulk quantity of marijuana, with any evidence to support the implication. Defendant contends he was merely present at the scene to visit his friend Akers.

"Improper questioning rises to the level of reversible error when the 'misconduct . . . is of sufficient significance to result in the denial of the defendant's right to a fair trial.'" *United States v. Irizarry*, 341 F.3d 273, 306 (3d Cir. 2003) (quoting *Greer v. Miller*, 483 U.S. 756, 765, (1987)). A new trial is warranted only when the questioning causes substantial prejudice. *Id.* In assessing whether the Government's line of questioning warrants a new trial, we note that "it is important as an initial matter to place the remark in context' of the entire trial." *Id.* (quoting *Greer*, 483 U.S. at 766).

At a sidebar conference held during Special Agent Maxwell's testimony, the Court advised counsel that Special Agent Maxwell was only permitted to testify about things that she observed. (Oct. 4. Tr. (PM) 82.) She admitted that, during the surveillance, she could not see Defendant with her naked eye. (Oct. 9 Tr. (AM) 93.) She instead testified about a photograph depicting Defendant standing a short distance away from and facing a white minivan. Defendant

argues that Government counsel relentlessly attempted to elicit testimony from Special Agent Maxwell that Defendant was seen—either through surveillance or in photographs—walking towards the white minivan, as if to give the impression that he drove it away from the meeting, even though no evidence supports this assumption. However, a review of the entirety of the Special Agent’s testimony reveals that any attempts by Government counsel to elicit questions about Defendant physically approaching the van were met with defense objections, which were sustained by the Court. (*See, e.g.*, Oct. 4 Tr. (PM) 90-91; Oct. 9 Tr. (AM) 61-63.)

Even if the Government’s line of questioning directed to Special Agent Maxwell bordered on improper, the Court sustained all objections and did not permit the testimony. In addition, the jury was specifically instructed to ignore any questions by attorneys that are met with sustained objections. (*See* Oct. 17 Tr. 132 (Court: “When I sustained an objection the question was not answered or the exhibit was not received into evidence you must disregard the question or the exhibit entirely. Do not think about or guess what a witness may have said in an answer to the question.”).) The jury was also instructed that any testimony that they heard after a sustained objection must also be ignored. (*See id.* (Court: Sometimes the witness may have already answered before the lawyer made the objection and before I ruled on the objection. Ladies and gentlemen, if that happened and if I sustained the objection you must disregard the answer that was given.”).) Finally, Defendant’s involvement in the drug transaction on July 17, 2014 was corroborated with substantial evidence, including photographs, testimony, and telephone records. Significantly, Special Agent Lewis testified that Defendant had been in significant telephone contact with both Akers and Woods during the course of the day. (*See* Gov. Resp. Ex. A.) Any rational juror could conclude that this evidence contradicts Defendant’s

story that he was merely present to visit with a good friend. Defendant did not suffer substantial prejudice as a result of Special Agent Maxwell's testimony.

D. Prosecutor's Introduction of Summary Charts Not Prejudicial

Finally, Defendant argues that certain summary charts admitted into evidence by the Government caused prejudice and warrant a new trial. (*See* Gov. Exs. 122(q)(1)-(q)(6)). Special Agent Kevin Lewis, the primary case agent on this investigation, testified that, by using pen registers, historical cell site information, car rental applications, seized cell phones, toll records, and contact lists, he was able to determine certain phone numbers used by members of the conspiracy. (Oct. 11, 2018 Tr. (AM) 22, 82-83, ECF No. 796.) Based on this information, he was able to develop timelines of "contacts" between known cellular numbers and the frequency of contacts between cellular numbers. He presented his analysis in a series of summary charts that were admitted into evidence. The charts were helpful in summarizing the voluminous evidence that supported the Government's position that coconspirators were in frequent contact with each other during critical events over the course of the conspiracy. Cellular numbers associated with Defendant were included in this analysis. (*Id.* at 83.) Significantly, there were no objections raised at trial to the admission of Special Agent Lewis's summary charts.

Because Defendant failed to raise any objections to the summary charts during the trial, the evidentiary issue is subject to a plain error standard of review. *United States v. Iglesias*, 535 F.3d 150, 158 (3d Cir. 2008). To establish plain error, a defendant must show "(1) error, (2) that is plain, and (3) that affects substantial rights . . . [and] (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Johnson v. United States*, 520 U.S. 461, 467 (1997) (citations and quotation marks omitted); *United States v. Hakim*, 344 F.3d 324, 328 (3d Cir. 2003). Defendant has not demonstrated that he should prevail on plain error review.

Contrary to Defendant's contention, admission of summary charts did not affect his substantial rights. Defendant argues that the summary charts are misleading because they track the "contacts" made between cellular phones, but the total number of "contacts" was based on inaccurate and incomplete evidence. Special Agent Lewis did not subpoena phone records for Defendant. Instead, he based his analysis on the cellular phone records of coconspirators that contacted Defendant's cellular phone. Therefore, according to Defendant, there was no way to tell whether a contact from a coconspirator's cellular phone was received by Defendant (e.g., Defendant answered the call) because Special Agent Lewis did not have Defendant's cell phone records.

Defendant relies on Rule 1006 of the Federal Rules of Evidence. Rule 1006 provides that a party "may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court." Fed. R. Evid. 1006. Summaries under Rule 1006 are only admissible "if they rely upon admissible materials" and are "supported by a foundation showing that the exhibit is an accurate summary of the underlying materials." *United States v. Lynch*, 735 F. App'x 780, 785 (3d Cir. 2018) (citations omitted). Defendant's argument is specious. The fact that Defendant's phone records were not part of the record does not mean that the charts themselves, or the evidence used to create the charts was inaccurate. Moreover, the jury heard Agent Lewis testify that he counted a "contact" as any actual call made or text sent between cellular telephones, regardless of whether the call was answered. The jury could assign whatever weight they believed Agent Lewis's testimony and summary charts deserved. Defendant's request for a new trial on this basis will be denied.

III. CONCLUSION

For the foregoing reasons, Defendant's Motion for a Judgment of Acquittal, or Alternatively, for a New Trial, and Defendant's Supplemental Rule 29 and 33 Motions will be denied.

An appropriate Order follows.

BY THE COURT:

/s/ R. Barclay Surrick

R. BARCLAY SURRECK, J.

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

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 16-218-12
MALIK MARTIN	:	

ORDER

AND NOW, this 30th day of March 2020, upon consideration Defendant's Motion for a Judgment of Acquittal, or Alternatively, for a New Trial (ECF No. 879), and Defendant's Supplemental Rule 29 and 33 Motions (ECF No. 901), and all documents submitted in support thereof and in opposition thereto, it is **ORDERED** that the Motions are **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick

R. BARCLAY SURRICK, J.