

United States Court of Appeals For the First Circuit

No. 24-2020

UNITED STATES,

Appellee,

v.

ROBERT MONTEIRO,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. F. Dennis Saylor, IV, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Gelpí, Circuit Judges.

Ruth O'Meara-Costello, with whom Law Office of Ruth O'Meara-Costello, were on brief for appellant.

Robert Monteiro, pro se, was on supplemental brief for appellant.

Mark T. Quinlivan, Assistant United States Attorney, with whom Leah B. Foley, United States Attorney, were on brief for appellee.

October 8, 2026

LYNCH, Circuit Judge. Robert Monteiro appeals from his conviction and sixty-nine month sentence for one count of conspiracy to distribute and to possess with intent to distribute a controlled substance under 21 U.S.C. § 846. Monteiro challenges: (1) the admission of lay opinion testimony under Federal Rule of Evidence 701 from two law enforcement officers, (2) the admission of flight records and testimony by his co-defendant and cooperating witness under Federal Rules of Evidence 404(b) and 801(d)(2)(E), and (3) the sufficiency of evidence at trial. In a pro se supplemental brief, Monteiro also challenges: (4) the admission of his co-defendant's testimony on Confrontation Clause grounds, (5) the district court's factual findings underlying his sentence, and (6) the district court's inclusion of a fact he says is not in evidence in its order on his postconviction motions. Monteiro raised, and the district court rejected, many of the same arguments in his postconviction motions under Federal Rules of Criminal Procedure 29 and 33.

For the reasons outlined below, we **affirm** Monteiro's conviction and sentence.

I.

A. Record of Facts

As Monteiro challenged the sufficiency of the evidence supporting his conviction, we recite the facts in the light most favorable to the jury's verdict. United States v. Evans, 143

F.4th 1, 5 (1st Cir. 2025). As to his other claims, the standard of review varies, as described below.

In February 2020, the U.S. Postal Inspection Service (USPIS) and federal and state law enforcement began investigating a drug-trafficking operation led by Patrick Joseph. Pursuant to a search warrant, officers searched ten parcels mailed through the U.S. Postal Service (USPS) from Puerto Rico to Massachusetts and found that each contained two kilograms of cocaine concealed in air fryers or cash boxes. They also observed the delivery of companion parcels which shared many characteristics with the ten opened parcels, but which were not seized and opened.

In total, officers identified over 300 parcels connected to this operation. The opened parcels and companion parcels shared many indicia of drug trafficking: a name of a real person as the recipient, a shared last name between the sender and recipient, inconsistencies between the names and addresses on the CLEAR database, use of priority mail or priority mail express, cash payment, similar high weights and postage amounts, handwritten labels, and origination from Puerto Rico, a known location for cocaine shipments.

After parcels were delivered, co-conspirators brought them to Joseph in exchange for \$500-\$1,000 or cocaine. Joseph also paid \$500-\$1,000 to co-conspirators who provided addresses to receive parcels.

Officers linked eleven parcels connected to the operation to Monteiro. Five parcels had listed him as the recipient and another four were sent to his residence at 91 Highland St., Apt. 1. On May 18, 2020, Monteiro messaged Joseph a name and an address, 24 Banks St., Apt. 3. Two parcels identified by investigators were sent to that address, one on June 8, 2020, and the other on July 7, 2020.

On June 20, 2020, Massachusetts State Police Trooper Lynch observed Monteiro, Joseph, and a co-conspirator, Donald Cue, enter Joseph's stash house and leave approximately twenty-five minutes later. According to Cue, who testified as a cooperating witness for the prosecution, while inside, Joseph broke off a portion from a brick of cocaine, weighed it, and gave the portion to Monteiro. On another occasion, Cue went with Joseph to Monteiro's house to pick up over \$5,000 that Monteiro owed Joseph for cocaine.

On August 31, 2020, officers observed a USPS parcel delivery at Monteiro's residence. Shortly thereafter, Monteiro took the parcel inside and left his house carrying a satchel and a white rectangular object. Trooper Lynch attempted to follow Monteiro's car but abandoned the effort as unsafe after Monteiro made quick turns on side streets.

In March 2021, officers obtained warrants to intercept wire and electronic communications of Joseph and Cue. On

April 10, 2021, Monteiro called Joseph, who told Monteiro to "head over there right now," referring to 100 Liberty Place, Apartment 13E, which Joseph used as a stash house for cocaine. Monteiro replied, "[a]llright I'm gonna throw some clothes on and I'm gonna head over there" before officers saw both men arrive at the apartment. Detective Miskell followed Monteiro from the Liberty Place apartment to Randolph Shopping Plaza, where Monteiro parked in front of the postal center. There, Detective Wright saw a SUV stop behind Monteiro's car. Monteiro put a white object in the SUV through the passenger side window and took out what appeared to be a Foot Locker bag, which he then put in his own car. Although Detective Wright could not see inside the bag, he could tell that it was not weighty enough to contain shoes. Detective Wright testified, based on his experience having observed over one thousand drug transactions, that this appeared to be a drug transaction.

On April 17, 2021, officers intercepted a call in which Joseph told Monteiro, "I got something that you can have them try," and "so when you come just re . . . return the pair that don't fit." U.S. Postal Inspector Powers testified that this was code for returning a bad batch of cocaine.

In May 2021, officers executed a search warrant on 100 Liberty Place, Apartment 13E and recovered twelve kilograms of cocaine. Officers also executed a search warrant on Monteiro's

residence and seized a digital scale and a cell phone Monteiro used to communicate with Joseph.

Inspector Powers interviewed Cue, who informed him of a prior conspiracy to import cocaine from Haiti between 2011-2015 involving Joseph, Cue, and Monteiro. Inspector Powers obtained Monteiro's travel records from U.S. Customs and Border Protection, which showed Monteiro had made five short trips to Haiti between 2011-2015.

Monteiro and ten co-conspirators were charged with one count of conspiracy to distribute and possess with intent to distribute a controlled substance under 21 U.S.C. § 846. Monteiro was tried alone and convicted after a four-day jury trial.

B. Trial

1. State Trooper Lynch's Testimony

Trooper Lynch testified that he had eighteen years of experience as a state trooper, including seven years on the Norfolk County District Attorney's Office's Narcotic Unit and four years with the Massachusetts State Police, narcotics section, where he was a task force officer with USPIS. He stated that his "primary responsibility [with USPIS] is to identify and investigate shipments of narcotics shipped through the U.S. mail."

Trooper Lynch further testified that based on his training and experience he knew that drug parcels are usually shipped through priority mail express or priority mail so that

drug traffickers can track the parcels, postage is always paid for in cash since it is more difficult to trace than a credit or debit card, the listed sender does not exist at the return address, the sender is given the same last name as the recipient to make it look like a gift, and the label is handwritten. Trooper Lynch also explained:

[Drug traffickers] will use a real person's name [as the recipient] because sometimes packages get held up at post offices, and in my training and experience through this investigation and other investigations, when that package gets held up at the post office, if you have the real person's name as the recipient, that person can go to the post office, show an I.D. that that is the real person, and they could pick up the package.

Other than objecting to the form of the question as leading, Monteiro did not object to this testimony. Trooper Lynch explained that the parcel he observed Monteiro retrieve from his porch, as well as other parcels identified by investigators, had each of those indicia of drug dealing. This exchange between the government and Trooper Lynch followed:

Q. And based on your training and experience, if a parcel has all of the indicators that you've talked about, how often have you found drugs when you've searched those parcels?

A. When these packages have come from Puerto Rico and they've contained all these characteristics, every time, sir.

Q. And based on your training and experience and in combination with all the indicators you mentioned, what did you believe the parcels depicted in Exhibit 33 contained?

A. Cocaine, sir.

Monteiro did not object to this testimony. When asked on cross-examination about his opinion that these parcels contained cocaine, Trooper Lynch answered, "[t]hat's what I believed, sir, and everybody else in the investigation believed the same." Monteiro did not object or move to strike this statement.

2. Postal Inspector Powers' Testimony

Postal Inspector Powers testified that he had worked as a postal inspector since 2019, and before that, worked in the USPS Office of the Inspector General for fourteen years. He corroborated Trooper Lynch's testimony as to the common characteristics of cocaine parcels from Puerto Rico. After the district court's partial denial of Monteiro's motion in limine to exclude testimony, Inspector Powers testified, "[o]ftentimes based on my experience, shippers of narcotics will use a real person's name on a package. . . . That person typically is trusted by the organization, and they use a trusted person to ensure that the package is delivered properly and not returned to sender." And when a parcel is held at the local post office, the recipient "would have to physically go to that post office and present an I.D. with the name matching the name that's listed on the package."

Turning to this case, Inspector Powers testified that they seized ten parcels that each contained two kilograms of cocaine and identified numerous other companion parcels. He

testified, over objection, "I believe that each package, each companion package that I identified in the investigation each contained 2 kilograms of cocaine." The district court admitted the testimony and instructed the jury that "this is the witness's inference from these other characteristics. As I understand it, these packages were not opened and the contents assessed and tested and all of that."

Inspector Powers also testified to his interview with Cue, and how he obtained Monteiro's flight records showing five trips to Haiti between 2011-2015, to corroborate that interview.

3. Co-Defendant and Cooperating Witness Donald Cue's Testimony

Donald Cue testified that he first learned in 2014 or 2015 that Joseph had people smuggle cocaine into the United States from Haiti. In 2015, Joseph asked Cue if he knew anyone who could travel to Haiti to retrieve cocaine. Joseph told Cue that Monteiro "has done it before, it was easy." Cue also testified that Joseph later told him that Monteiro retrieved cocaine parcels from Puerto Rico for Joseph.

Prior to trial, the government filed a motion in limine to admit Cue's Haiti testimony and Haiti flight records under Rule 404(b) for the purpose of showing Monteiro's intent, preparation, plan, knowledge, absence of mistake, and lack of accident. The government later supplemented the motion to address hearsay

concerns and argue for admissibility under Rule 801(d)(2)(E). Monteiro opposed the motion on the same grounds he argues here -- that the evidence was inadmissible character evidence and hearsay. The district court granted the government's motion, saying it found "that there is special relevance within the meaning of 404(b)" and "the possibility of unfair prejudice is limited." As to the hearsay concerns, the district court provisionally admitted Joseph's statements about Monteiro's involvement with the Haiti conspiracy. At the close of the government's case-in-chief, the district court ruled that Joseph's statements were admissible. Monteiro did not object.

C. Sentencing

On October 24, 2024, the district court sentenced Monteiro to sixty-nine months' imprisonment followed by three years of supervised release. Monteiro's sentence was calculated, in part, by the amount of cocaine attributable to him. Monteiro objected to the district court's calculation that attributed to him twenty-two kilograms of cocaine. The district court explained that the drugs attributed to him for sentencing are ones that the court found, by a preponderance of the evidence, he had handled, had anticipated handling, or had reasonably foreseen other co-conspirators handling. And those are the eleven parcels, at

two kilograms per parcel, addressed to him, shipped to his residence, or shipped to the address he provided Joseph.

Monteiro argued that it was "theoretical" to assume that the eleven parcels that were never seized or opened contained two kilograms of cocaine each, and the district court should only consider the cocaine that Cue witnessed Joseph break off from a brick and give to Monteiro. The district court rejected Monteiro's arguments.

Following the entry of the judgment, Monteiro filed a notice of appeal, which was stayed pending the resolution of his postconviction motions.

D. Postconviction Motions

Monteiro filed a motion for a judgment of acquittal pursuant to Rule 29(c)(1). He argued that the evidence, in the light most favorable to the verdict, was insufficient for a rational jury to find beyond a reasonable doubt that Monteiro knowingly joined the conspiracy and knew of the contents of the parcels. Monteiro also filed a motion for a new trial pursuant to Rule 33. Monteiro challenged the admission of flight records showing Monteiro's trips to Haiti between 2011-2015 and argued that the district court predicated the admission of Cue's testimony on the assumption that the events in Haiti and Puerto Rico constituted the same conspiracy but did not establish that fact.

Monteiro also made additional arguments not relevant to this appeal.

In denying both motions, the district court held that the evidence at trial "readily permitted a rational jury to conclude that the defendant knowingly and willfully participated in the conspiracy." The court also held that the Haiti evidence "does shed substantial light on defendant's knowledge of and willing participation in the charged drug conspiracy," and at the very least, is "evidence of his awareness of Joseph's drug-trafficking practices."

II.

A. Challenges to the Officers' Lay Opinion Testimony

Monteiro challenges the admission of Trooper Lynch's and Inspector Powers' lay opinion testimony: (1) that they believed certain parcels linked to him contained cocaine and (2) that shippers of narcotics use a trusted person's real name as the recipient of parcels.

1. Law Enforcement Testimony that Certain Unopened Parcels Contained Cocaine

Monteiro did not object to Trooper Lynch's testimony that he believed certain parcels, one of which was addressed to Monteiro, contained cocaine, that the parcel delivered to Monteiro and which Monteiro was observed picking up contained cocaine, and that "everybody else in the investigation believed the same," so

review is for plain error. See Evans, 143 F.4th at 13. Monteiro did object to Inspector Powers' testimony that he believed the companion parcels identified in the investigation, but not seized, contained two kilograms of cocaine, so review is for abuse of discretion. See United States v. Ross, 171 F.4th 522, 528 (1st Cir. 2026) (citation omitted). If there is an abuse, we will reverse only if the error was not "harmless." United States v. Kilmartin, 944 F.3d 315, 338 (1st Cir. 2019). An error is harmless if "it is 'highly probable' that the error did not contribute to the verdict." United States v. Villa-Guillen, 102 F.4th 508, 519-20 (1st Cir. 2024) (quoting Kilmartin, 994 F.3d at 338).

As to Trooper Lynch's testimony, we see no plain error because no binding authority has addressed this precise question, as Monteiro admits. As to Inspector Powers' testimony, it was largely cumulative of Trooper Lynch's testimony. In any event, if there was any error, the error was harmless because it is highly probable that the challenged testimony did not contribute to the guilty verdict that Monteiro was a knowing co-conspirator in this large cocaine conspiracy.

Lay opinion testimony must be "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Fed. R. Evid. 701. We have

consistently held that, consistent with Rule 701, law enforcement witnesses may offer lay opinions informed by their on-the-job experiences in investigations similar to the one at issue here. See United States v. Valdivia, 680 F.3d 33, 50-51 (1st Cir. 2012) (affirming the admission of an officer's lay testimony that drug traffickers often list unrelated third parties as their telephones' subscribers based on experience investigating other drug trafficking schemes); United States v. Maher, 454 F.3d 13, 24 (1st Cir. 2006) (finding no error in the admission of lay testimony that a Post-it note with "4" next to a name represented an order of four ounces of cocaine based on the law enforcement witness's previous experience with drug investigations); United States v. Ayala-Pizarro, 407 F.3d 25, 29 (1st Cir. 2005) (allowing officer's lay testimony based on prior drug arrests that heroin seized at drug points is typically packed in aluminum decks, and the heroin there was "[i]n a shape or manner of a deck").

Prior on-the-job experience may form the basis of lay opinion testimony so long as it is "rationally based on the witness's perception." Fed. R. Evid. 701(a); see also Valdivia, 680 F.3d at 50-51. Both officers testified based on their training and experience, including "[h]undreds" of narcotics cases, and

Inspector Powers testified to seizing "[h]undreds" of parcels in his career.¹

Monteiro does not contest the admission of testimony regarding the characteristics that the parcels linked to him shared with other cocaine parcels. He only challenges the officers' testimony that, based on those characteristics, the parcels in question, which were never opened, contained cocaine. His position has some support. As we have previously noted, it is a somewhat different issue whether the officers' testimony should have drawn the conclusion they did. See Ayala-Pizarro, 407 F.3d at 29 (allowing lay testimony that, similar to prior investigations, the heroin was packaged "[i]n a shape or manner of a deck," while noting that "[t]he jury was left to draw its own conclusions as to the contents and purpose of the decks, undoubtedly assisted by the fact that the 153 decks seized in this

¹ As was discussed at oral argument, not all types of law enforcement "training" are based on the officer's perception and can form the basis for a lay opinion under Rule 701. The government repeatedly framed its questions to both officers with "based on your training and experience" but never elicited testimony as to the underlying training. The officers testified based on their on-the-job experiences with other drug investigations and opening parcels in those investigations. For Monteiro's challenge to testimony regarding drug traffickers' typical practice of using a trusted person's name, he argues that Trooper Lynch's testimony leaves open the possibility that all the facts he learned came from training. The government could avoid any ambiguity in the future by having officers testify to the specifics of their training or only to on-the-job experiences.

case, when tested, in fact contained heroin" (first alteration in original)).²

Assuming, without deciding, that the district court erred in allowing the officers to testify to their beliefs about the contents of the parcels, any resulting error was harmless. When evaluating the impact of evidence at trial, the harmless error standard "directs us to consider the 'centrality of the tainted material, its uniqueness, its prejudicial impact, the uses to which it was put during the trial, the relative strengths of the parties' cases, and any telltales that furnish clues to the likelihood that the error affected the factfinder's resolution of a material issue.'" Villa-Guillen, 102 F.4th at 520 (quoting Kilmartin, 944 F.3d at 338). The strength of the government's evidence of guilt is "normally the most important integer in the harmless equation." Kilmartin, 944 F.3d at 338. We "may find an error harmless when the properly admitted evidence, in and of itself, furnished overwhelming proof of the defendant's guilt." Id.

The evidence of Monteiro's participation in the charged conspiracy was overwhelming. Among other evidence, there was evidence of Monteiro's communications with Joseph about replacing a bad batch of cocaine and giving Joseph an address to ship drugs

² Here, the government could have avoided the issue of whether such questioning is consistent with Rule 701 by not asking the final question that elicited the officers' beliefs.

to, the meeting at Joseph's stash house in which Joseph gave Monteiro cocaine, Joseph picking up from Monteiro \$5,000 that Monteiro owed for cocaine, Joseph's statement that Monteiro picked up cocaine parcels for him, evidence of Monteiro's involvement in the Haiti conspiracy, and the drug transaction in the Randolph Shopping Plaza.

2. Lay Testimony that Shippers Use Names of Trusted People

Monteiro argues that the district court erred in admitting Trooper Lynch's and Inspector Powers' lay testimony that drug traffickers typically use the names of trusted people as recipients, asserting that the district court relied on inapplicable Supreme Court precedent and the testimony could only be offered as expert testimony under Rule 702. We reject the argument and bypass the issue of whether Monteiro has either waived or forfeited the argument.

The parties disagree over whether the district court's ruling on the motion in limine was unconditional, preserving the issue for appeal, or conditional, requiring Monteiro to object during the trial.³ Monteiro objected to the government's question

³ Prior to trial, Monteiro filed a motion in limine to exclude testimony as to his mental state, specifically whether he knew the parcels contained cocaine. He objected on the grounds that his mental state would not be within the "personal knowledge" of the officers under Fed. R. Evid. 602. He also conceded that, although Rule 704(b) prevents expert witnesses from testifying to whether the defendant had a mental state that constitutes an element of the charged offense, they can testify to predicate facts

to Trooper Lynch of whether people shipping drugs typically use a real name as the recipient as leading, but that does not preserve objections on other grounds. See United States v. Concepcion-Guliam, 62 F.4th 26, 32 n.4 (1st Cir. 2023) (citing United States v. Iwuala, 789 F.3d 1, 7 (1st Cir. 2015)).

The district court did not abuse its discretion in concluding that Trooper Lynch's and Inspector Powers' testimony falls squarely under First Circuit precedent allowing lay testimony based on specialized knowledge obtained while on the job. See Maher, 454 F.3d at 24; see also Ayala-Pizarro, 407 F.3d at 28 (holding that an officer's testimony explaining how drug points typically operate is admissible under Rule 701 because it was based on "particularized knowledge that the witness [had] by virtue of his . . . position" as a police officer (quoting Fed. R. Evid. 701, advisory committee's note)). Both officers testified

from which the jury could infer that mental state. See United States v. Soler-Montalvo, 44 F.4th 1, 14 (1st Cir. 2022) (citing United States v. Henry, 848 F.3d 1, 11 (1st Cir. 2017)). The government argued that the testimony is admissible given Diaz v. United States, 602 U.S. 526 (2024), in which the Supreme Court held that expert testimony that "'most people' in a group have a particular mental state is not an opinion about 'the defendant' and thus does not violate Rule 704(b)." Id. at 538. In Diaz, an expert witness in law enforcement testified that "most" couriers know that they are transporting drugs. Id. at 530. In a pretrial conference, the district court applied Diaz and ruled that the testimony that drug traffickers typically use the names of trusted people as recipients is admissible.

that their opinions were based on their extensive experience investigating drugs sent through the mail.⁴

B. Challenges to Haiti Conspiracy Evidence

Monteiro challenges the admission of Customs and Border Protection records showing Monteiro's trips to Haiti and Cue's testimony that Joseph told him that Monteiro used to smuggle cocaine from Haiti, as he argues that this evidence is inadmissible character evidence under Rule 404(b) and that Joseph's statements are hearsay. In his pro se brief, Monteiro also argues that Joseph's statements violate the Confrontation Clause of the Sixth Amendment. There is no error.

1. Rule 404(b)

Monteiro preserved his objection on Rule 404(b) grounds, so review is for abuse of discretion. Ross, 171 F.4th at 528. Likewise, review of a district court's denial of a motion for a new trial is for abuse of discretion. United States v. French, 977 F.3d 114, 121 (1st Cir. 2020) (citing United States v. Paniagua-Ramos, 251 F.3d 242, 249 (1st Cir. 2001)).

⁴ Monteiro argues for the first time on appeal that this testimony should have been offered as expert testimony subject to the requirements of Rule 702. We review for plain error, see United States v. Duarte, 246 F.3d 56, 60 (1st Cir. 2001), and we find none. Monteiro asks this court to reevaluate its precedents that draw the line between Rule 701 and Rule 702, citing to the Valdivia concurrence. Under the law of the circuit doctrine, we are bound by prior panel decisions, see United States v. Robertson, 162 F.4th 209, 249-50 (1st Cir. 2025), and Monteiro does not argue that an exception to the doctrine applies.

Under Rule 404(b), "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but it "may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(1), (2). Under the First Circuit's two-part test, prior bad acts evidence is admissible if it has "special relevance," meaning it is probative of one of the permissible uses under Rule 404(b)(2), and the probative value is not "substantially outweighed by the danger of unfair prejudice" under Rule 403. United States v. Aguilar-Aranceta, 58 F.3d 796, 798 (1st Cir. 1995).

The government correctly argues there was no abuse of discretion because the evidence is highly probative of Monteiro's knowledge of Joseph's drug trafficking operation and his willingness to participate in it. In United States v. Doe, 741 F.3d 217 (1st Cir. 2013), this court upheld the admission of evidence of a defendant's prior drug transactions to show his knowledge that the substance he provided to an undercover agent was crack cocaine, and that he intended to sell crack cocaine to the undercover agent. Id. at 230-32; see also United States v. Manning, 79 F.3d 212, 217 (1st Cir. 1996) ("[W]hen charges of drug trafficking are involved, this court has often upheld the admission

of evidence of prior narcotics involvement to prove knowledge and intent." (citation omitted)). Here, the Haiti evidence is probative of Monteiro's knowledge of the Puerto Rico conspiracy and his intent to further the aims of the conspiracy, two elements that the government must prove. See United States v. Sepetu, 176 F.4th 104, 112 (1st Cir. 2026).

We reject Monteiro's argument that the special relevance is diminished when the evidence is "considered in light of the remoteness in time of the other act and the degree of resemblance to the crime charged." United States v. Frankhauser, 80 F.3d 641, 648 (1st Cir. 1996) (quoting United States v. Fields, 871 F.2d 188, 197 (1st Cir. 1989)). In Frankhauser, the district court admitted prior bad acts evidence from seven years before the charged offense. Id. at 649. As we also said there, "[t]he remoteness in time did lessen the overall probative value of the evidence," but not enough to overturn the admission of the evidence. Id. The Haiti conspiracy spanned from nine years before to five years before the Puerto Rico conspiracy.

Monteiro next argues that the "Haiti events differed substantially" given the different means and actors, but both schemes were led by Joseph, aided by Monteiro, to import cocaine from the Caribbean and into the mainland United States. The difference in means (drug mules versus mail) does not make the evidence not relevant. Given the similarity of the two

conspiracies and the overlapping participants, the evidence had special relevance.

Evidence of Monteiro's prior involvement with Joseph was also admissible to show why Joseph would trust him to handle parcels containing two kilograms of cocaine, which, according to Cue, were worth between \$72,000 and \$100,000, each. Evidence of prior involvement may "explain the background, formation, and development of the illegal relationship," United States v. Escobar-de Jesus, 187 F.3d 148, 169 (1st Cir. 1999) (citations omitted), and demonstrate "co-conspirators' relationship of mutual trust," United States v. Castillo, 158 F.4th 257, 274 (1st Cir. 2025) (quoting United States v. Weadick, 15 F.4th 1, 18 (1st Cir. 2021)).

We reject Monteiro's argument that the probative value is substantially outweighed by the prejudicial effect on the basis that it strongly suggested a propensity for drug importation and was not necessary. "By design, all evidence is meant to be prejudicial," United States v. Rodriguez-Estrada, 877 F.2d 153, 156 (1st Cir. 1989), so this rule bars only "unfair prejudice" that "invites the jury to render a verdict on an improper emotional basis," United States v. Varoudakis, 233 F.3d 113, 122 (1st Cir. 2000). But the test is not whether the evidence is necessary. The district court did not abuse its discretion.

2. Hearsay Objection

Monteiro's hearsay objection to Cue's testimony is reviewed only for plain error. See United States v. Pena, 24 F.4th 46, 60-61 (1st Cir. 2022). There was no error. The statements are clearly admissible as co-conspirator statements are excluded from hearsay by Rule 801(d)(2)(E).

Rule 801(d)(2)(E) requires the proponent of the statement to "establish by a preponderance of the evidence that the declarant and the defendant were members of the same conspiracy at the time that the statement was made and that the statement was made 'in furtherance' of the conspiracy." United States v. Ramos-Baez, 86 F.4th 28, 72 (1st Cir. 2023) (applying the requirements enumerated in United States v. Petrozziello, 548 F.2d 20 (1st Cir. 1977)). The proponent of the statement must use extrinsic evidence other than the statement itself to corroborate the existence of the conspiracy. See Pena, 24 F.4th at 61. Joseph's statements were made in furtherance of the Haiti conspiracy because they were made to elicit names of people who could serve as drug mules. And contrary to Monteiro's argument in his pro se supplemental brief, the government need not prove that the statements were made in furtherance of the charged conspiracy. Rule 801(d)(2)(E) applies to any conspiracy, even if distinct from the conspiracy for which Monteiro was tried. See Weadick, 15 F.4th at 9 ("[T]he hearsay exception under Rule

801(d)(2)(E) can apply regardless of whether the conspiracy furthered by the alleged hearsay is charged or uncharged and regardless of whether the conspiracy is identical to or different from the crime that the statements are offered to prove." (citation modified)); see also United States v. Marino, 277 F.3d 11, 25-26 (1st. Cir 2002) ("We have already ruled that another conspiracy, larger than the one charged at trial, may provide the basis for the admission of the coconspirator's statements." (citation omitted)). Cue's testimony regarding the details of the conspiracy and Monteiro's involvement, along with the rest of the evidence, satisfy Petrozziello.

3. Pro Se Confrontation Clause Claim

Monteiro argues in his pro se supplemental brief that Joseph's statements violated the Confrontation Clause and Bruton Rule, asserting the government relied on Cue to elicit Joseph's statements while Joseph refused to testify and face cross-examination. No such argument was made before the district court, and at best, review is for plain error. A defendant waives his argument when he "fails to even attempt to explain how the plain error standard has been satisfied." Castillo, 158 F.4th at 277 (quoting United States v. Severino-Pacheco, 911 F.3d 14, 20 (1st Cir. 2018)). Here, Monteiro fails to explain how his Confrontation Clause challenge satisfies the plain error standard in his pro se supplemental brief, so this argument is waived.

C. Challenge to Sufficiency of Evidence

On de novo review, we affirm the district court's denial of Monteiro's motion for judgment of acquittal challenging the sufficiency of the evidence. See United States v. Abercrombie, 162 F.4th 47, 51 (1st Cir. 2025). We "ask whether a rational jury could find that the government proved all the elements of the offense beyond a reasonable doubt." Concepcion-Guliam, 62 F.4th at 32-33 (quoting United States v. Fuentes-Lopez, 994 F.3d 66, 71 (1st Cir. 2021)). Our prior extensive discussion of the evidence explains why a rational jury could, and did, easily convict Monteiro.

Monteiro argues the evidence was insufficient to establish, first, his knowledge of, and second, his participation in the drug conspiracy. He argues that, at best, Cue's testimony established only a buyer-seller drug relationship. He offers alternative explanations of the evidence, but a rational jury could easily have rejected those explanations in light of the totality of the evidence, see United States v. Martínez, 994 F.3d 1, 6 (1st Cir. 2021), which we have amply described earlier.

Monteiro next mischaracterizes the district court's reasoning as "impermissibly stacking inference upon inference," relying on United States v. Guzman-Ortiz, 975 F.3d 43, 55 (1st Cir. 2020). "The rule that prohibits the stacking of inference upon inference merely indicates that at some point along a rational

continuum, inferences may become so attenuated from underlying evidence as to cast doubt on the trier of fact's ultimate conclusion." United States v. Basilici, 138 F.4th 590, 599 (1st Cir. 2025) (quoting United States v. Summers, 414 F.3d 1287, 1295 (10th Cir. 2005)). And "[t]he chance of error or speculation increases in proportion to the width of the gap between underlying fact and ultimate conclusion where the gap is bridged by a succession of inferences, each based upon the preceding one." Id. (quoting Summers, 414 F.3d at 1295). This case does not present an inference stacking problem.

Guzman-Ortiz does not help Monteiro because the evidence there, at best, showed "[m]ere association with conspirators or mere presence during conduct that is part of the conspiracy" rather than knowing and voluntary participation. 975 F.3d at 47-48 (citation modified). By contrast, the direct and circumstantial evidence against Monteiro shows much more than just "mere association" with conspirators or "mere presence" during conduct that is part of the conspiracy. Monteiro's "[b]are citation to this inference-stacking principle," without showing how the inferences stack upon each other to create an attenuated chain between fact and conclusion, "rings hollow." United States v. Ridolfi, 768 F.3d 57, 61 (1st Cir. 2014).

D. Challenge to Factual Findings at Sentencing

Monteiro objected to the determination that he was

accountable for twenty-two kilograms of cocaine at the sentencing hearing, so his challenge is preserved. This court reviews a district court's "factual finding for clear error and ask[s] not 'whether there is any view of the evidence that might undercut the district court's finding,' but rather 'whether there is any evidence in the record to support the finding.'" United States v. Mello, 164 F.4th 120, 131 (1st Cir. 2026) (quoting United States v. Rodriguez, 115 F.4th 24, 50 (1st Cir. 2024)). This requires the court to "accept the district court's findings unless, on the whole of the record, we form 'a strong, unyielding belief that a mistake has been made.'" United States v. Soto-Villar, 40 F.4th 27, 33 (1st Cir. 2022) (quoting United States v. Cintrón-Echautegui, 604 F.3d 1, 6 (1st Cir. 2010)).

A district court in drug conspiracy cases "must make an individualized finding concerning the quantity of drugs attributable to, or reasonably foreseeable by, the offender." Cintrón-Echautegui, 604 F.3d at 5 (citation omitted). The drug weight finding "may be based on approximations drawn from historical evidence as long as those approximations represent reasoned estimates of drug quantity." United States v. Mejia, 55 F.4th 1, 9 (1st Cir. 2022) (quoting United States v. Ventura, 353 F.3d 84, 88 (1st Cir. 2003)). The court's findings need only be supported by a preponderance of the evidence. Mello, 164 F.4th at 131.

The court determined that eleven parcels identified in the investigation were connected to Monteiro: five addressed to him, four delivered to his residence, and two connected to an address that he supplied to Joseph. The district court's findings are amply supported by the record, as described above.

The government centrally argues that under United States v. Sklar, 920 F.2d 107 (1st Cir. 1990), the district court could reasonably estimate the drug weight. In Sklar, we upheld the district court's use of the weight of the cocaine found in one opened package to estimate the weight of the cocaine contained in eleven packages that were not seized but shared many of the same characteristics as the opened package. Id. at 112-14. Similarly, in United States v. Hilton, 894 F.2d 485 (1st Cir. 1990), this court upheld the sentencing court's drug weight finding that used the weight of one opened package to estimate the weight of identical packages that sank before they could be opened. Id. at 487-88.

Our precedent dooms Monteiro's pro se argument that the district court's drug weight finding was merely speculative. On this record, twenty-two kilograms is a reasonable and conservative estimate for the drug weight attributable to Monteiro.⁵

⁵ In his pro se brief, Monteiro also challenges the district court's reference to a May 10, 2021, phone call not admitted into evidence in its Memorandum and Order denying Monteiro's postconviction motions. There was no error. The phone call's

III.

For the foregoing reasons, we affirm Monteiro's conviction and sentence.

transcript was attached as an exhibit to Joseph's supplemental memorandum in support of a motion to suppress evidence seized pursuant to a search warrant. The call was discussed at a December 20, 2023, hearing and is part of the record on appeal under Federal Rule of Appellate Procedure 10(a).