IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

Appellee

vs.

JOSEPH CAMMARATA

Appellant

No. 24-1983

BRIEF FOR APPELLANT AND JOINT APPENDIX VOL. 1 (JA1-JA18)

Appeal from the Judgment of Sentence of United States District Court for the District of New Jersey at No. 3:22-cr-00639.

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STATEMENT OF JURISDICTION

This appeal seeks review of a judgment of conviction and sentence in the United States District Court for the District of New Jersey entered after a jury trial. This Court has appellate and subject matter jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, to review a judgment of sentence. The conviction was originally entered on the docket on May 13, 2024 and appellant filed a timely Notice of Appeal on May 25, 2024.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the district court err in denying Appellant's Motion for Judgment of Acquittal and, in so doing, also violate Appellant's Fifth Amendment Due Process Right to a fair trial based on the Government's failure to prove that Appellant willfully attempted to evade the assessment of taxes, which for tax years 2015-2019? *This issue was raised both during trial and in post trial motions.* See *ECF nos. 134 and 152; 22-cr-00639-RK.*

2. Did the District Court err in denying Appellant's motion for a new trial based upon the government's failure to comply with its *Brady* and discovery obligations under Fed. R. Crim. P. 16(a)(l)(E) and (G) for tax years 2015-2019 by failing to provide defense counsel with: (a) copies of the Plan of Allocation ("POA") for all class action distribution settlement payments made by distribution administrators who issued distribution checks to Appellant's hedge funds during the years 2015-2019; (b) all IRS Form 1042-S; and (c) all letters sent by the class action distribution claims administrators which accompanied IRS Form 1042-S sent to the IRS?[1] *The motion for a new trial was raised in Appellant's post-trial legal memorandum.* See ECF no. 134; 22-CR-00639.

3. Did the government constructively amend its indictment against Mr.

[1] Appellant owned three hedge funds. He assigned the bulk of his stock holdings to two of his hedge funds. The third fund became operative in 2020.

Cammarata by changing its theory of prosecution from its claim that he willfully attempted to evade the assessment of taxes, in violation of 26 U.S.C. Section 7201, to filing materially false tax returns, in violation of26 U.S.C. Section 7206(1)? *This issue was raised below as follows.* See *ECF nos. 152 and 162-164; 22-cr-00639.*

4. Did the district court abused its discretion in denying Appellant's Motion *in limine* which sought to prohibit the same fraud scheme evidence from being admitted into the record in this case before requiring the Government to make an offer of proof regarding the: (a) relevance of the evidence; (b) its probative value, and; (c) the harmful effects of the fraud scheme evidence which prevented Appellant from receiving a fair trial based on the District Court'ss admission of Rule 404(b) evidence, without balancing the probative value of that evidence against its prejudicial effect, under Fed. Evid. Rules 401 and 403 resulting in Appellant not receiving a fair trial? *This was raised in a motion* in limine. See *ECF no. 61; 22-CR-00639.*

STATEMENT OF RELATED CASES

The following cases are related to the present appeal:

(1) *Securities & Exchange Comm 'n v. Cammarata, et al.*, 2:21-cv-4845-CFK (E.D. Pa.) (parallel civil action). A Judgment was entered on January 27, 2024 ("Cammarata #1").

(2) *United States v. Cammarata*, 2 l-cr-00427 (E.D. Pa.) This was a criminal case that arose from related facts and circumstances in ("Cammarata #1 "). Referred to in this brief as ("Cammarata #2").

(3) *United States v. Cammarata*, 23-2110 (3d Cir.) (this is the appeal from Cammarata #2. On February 24, 2025, this Court affirmed the judgment of conviction but reversed and remanded on the issue of restitution.This case is referred to in this brief as Cammarata #3.

(4) *United States v. Cammarata*, 24-1485 (3d Cir.). Pretrial bail order. Appeal denied. This case is referred to as "Cammarata #4"

(5) United States v. Cammarata, 22-2779 (3d Cir.) Bail requested. Second bail modification Motion. Motion denied. This case is referred to as "Cammarata #5."

(6) *United States v. Cammarata*, 22-cr-00639-PGS. This case is the tax evasion conviction which is currently before this court on appeal. The case is referred to in the brief as "Cammarata #7").

Appellant Cammarata was sentenced to 60 months imprisonment on Counts

1 through 4 of his indictment in this case which would be served concurrently. On Count 5, Appellant was sentenced of 12 months which would be served consecutively to Counts 1 through 4 for a total sentence of 72 months imposed by Judge Sheridan from which this appeal arose. Appellant will have to serve, in summary, an additional year of imprison after his sentence in the Cammarata #2 ends.

STATEMENT OF THE CASE

The Statement of the Case is divided into several sections with sub-headings in an effort to clearly summarize the posture of the case.

A. The Indictment

On September 22, 2022, Appellant Cammarata was indicted on five counts of willfully attempting to evade the assessment of federal income taxes. The Indictment alleged that Appellant had received more gross income than he reported on his federal income tax returns for tax years 2015-2019 in violation of 26 U.S.C. § 7201. *See* ECF no. 1 (Indictment); 22-cr-639. The income that the Indictment accused appellant of failing to report was as follows:

- Count 1: $1,721,646.11
- Count 2: $2,550,491.29
- Count 3: $4,821,782.19
- Count 4: $3,556,426.36
- Count 5: $3,350,113.23.

Each of the five counts contained similar allegations. The United States alleged that Mr. Cammarata attempted to evade the assessment of taxes by: (a) diverting income into accounts in corporate names; (b) paying personal expenses from corporate accounts; and (c) providing to his tax return preparer false financial information and that Appellant's returns did not include the income described in

Counts 1-5.

B. The Jury Trial

Appellant was indicted in the District of New Jersey approximately 3 weeks before the fraud trial began in Cammarata #2. The tax fraud indictment charged Cammarata with willfully attempting to evade taxes on certain class action settlement proceeds he received. Appellant owned two hedge funds, artificial non-taxable entities, to which he assigned his trade rights accumulated through private trades. He did not assign or file claims on trades that he made on behalf of his large institutional investors, such as Goldman Sachs, the New York Stock Exchange, and the Chicago Stock Exchange.

Mr. Cammarata traded 2-3% of the U.S. Exchange volumes daily and his trade claims were filed using Alpha Plus as a claim aggregator, filing claims with multiple class action claims administrators. The claims requested review and approval from the claims administrators as to whether the hedge funds were qualified claimants. The claims administrator approved the hedge fund applications.

Disbursement checks were sent to the hedge funds in case of Alpha plus. As owner of the hedge funds, the distribution of the loss recovery pro rata return of capital inured to the benefit of the Appellant since he owned both the hedge funds and the trades that had been assigned to the hedge funds.

Appellant's distribution checks that were sent to his hedge funds, as a non-

taxable return of capital, flowed through the hedge funds to Appellant for tax purposes. The distribution checks only represented Appellant's *recognized loss,* as determined by the claims administrators using a court-approved plan of allocation.

Appellant's assignment of his beneficial ownership interest of his trades to his hedge funds provided the funds with the legal standing needed to pursue any claims that Appellant otherwise had a right to pursue. The amount of each distribution check was determined by an algorithm used by the class administrators. Before forming Alpha Plus, Appellant traded billions of shared of stock when he owned Speed Route. Appellant had a unique business model that required him to own many trades in his account and then provide a different single trade to his client. Appellant could purchase stocks on margin enabling him to purchase large quantities of stock.

Appellant, as pro se defendant, with assistance of standby counsel, cross-examined his former business partner Erik Cohen regarding the volume of stock trades that Appellant's company, Speed Route, engaged in as a brokerage firm:

> Q. [By appellant]: Mr. Cohen is it a fact that there were *billions of trades* from 2005 through 2015 from Speed Route?
>
> A. Off the top of my head, I don't know exactly how many, but I would assume that there were, yes, probably billions.
>
> Q. I'm Sorry?

A. I would say probably billions.

N.T. Trial, November 7, at 822:9-15.

On November 15, 2023, following a jury trial, Appellant was convicted on all five counts in the indictment. Through counsel, Appellant moved the trial court for an Order which requested an acquittal of the charges lodged against him despite the jury's verdict. In the alternative, Appellant asked the district court to grant him a new trial for reasons that are discussed in greater detail in the argument section of this brief. The motion was denied. *See* ECF no. 159; 22-cr-639.

The District Court permitted Appellant to file written motions to supplement arguments Appellant had made through counsel during and at the end of trial in support of his requests for a new trial or judgment of a acquittal. Both motions were denied. *See* ECF nos. 101, 104, 11; 22-cr-639.

C. Appellant's Entry into the Security Market

Starting in his late teens, following his enrollment at St. John's University, Appellant obtained employment with the Datek Securities Company, an electronic stock brokerage firm.[2] Appellant was initially hired by Datek to repair the companies' computers based on his interest and knowledge of computers and electronics, paired with the use of algorithms, in finding opportunities for trades.

After leaving his employment at Datek, Appellant formed his own brokerage

[2] The information presented in this subsection is included to place the case in its proper context.

technology firm operating it as the chief executive officer. One of the companies he formed was Speed Route a brokerage-technology firm. Appellant developed a computer application ("App") which, at the time, was novel regarding new AI means of searching the internet, when coupled with an algorithm.[3] Appellant eventually sold his App to the Bank of New York. The proceeds from the sale of the App proved profitable to Appellant. His new wealth enabled him to retire and purchase a Bahamian Resort which he intended to convert into a touristic attraction.

D. The Formation of Alpha Plus Recovery Services

On August 14, 2014, Appellant, Erik Cohen and Dave Punturieri incorporated Alpha Plus Recovery LLC ("Alpha Plus").[4] The company operated as a class action claims aggregation company. Alpha solicited and collected claims held by stockholders who had opted into class action lawsuits as members of the plaintiff class.

Appellant by contrast contends that the class action distribution payments made to his hedge funds were legal because the hedge funds owned the beneficial interest in the trade which gave the hedge fund legal standing to make a claim. At

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[3]The information described here was presented during Appellant's trial in Cammarata #2. That information has only been summarized in this brief for background and context purpose to help shed more light on the question of whether Appellant owned the stocks that he assigned his beneficial ownership interest in which was held by his hedge funds at the time that the funds joined the class action plaintiff in each case where the funds held title to the funds that had been assigned to the funds by Appellant.

[4] Mr. Cammarata used personal funds to launch Alpha Plus.

the same time, the Appellant also owned Alpha Plus.

Given the ownership of his hedge funds and his ownership of Alpha Plus, the distribution payments paid to Appellant's funds were sent to Alpha Plus. Appellant divided the proceeds into three tranches. Appellant's partners received 2/3 of the proceeds as compensation from Alpha Plus while Appellant kept the remaining 1/3 pro rated portion of a recognized loss. Distribution payments are typically 8% or less of claimants' recognized loss and therefore not income.

Supreme Court precedent permits the owner of property interest to "split" the interest held by the property's owner into a beneficial interest and a legal interest which was approved of in *Sprint Communications Co. v. APCC Services,* 554 U.S. 269 (2008).

In this case, Appellant assigned his beneficial interest in stocks that he had acquired over many years, but mostly, the stock while he owned Speed Route. Appellant used his App to build a client base. After selling the App and retiring, Appellant formed the hedge funds at issue here. Appellant assigned his beneficial interest in the stock to his hedge funds.

E. Instant Appeal

This appeal is related to *United States v. Cammarata,* 21-cr-00427-011 (Cammarata #2) which is currently on appeal before this Court. Appellant was accused of being a participant in a conspiracy to commit wire fraud and other

offenses. The appellant proceeded to trial and was convicted. His codefendants, Erik Cohen and David Punturieri entered into plea agreements with the Government which included guilty pleas to tax fraud charges against the two men via Information.

Mr. Cammarata proceeded to trial in Cammarata #2 where he testified in his own defense. He did not testify in his tax trial in New Jersey. If he had don so, Appellant would have been required to waive his Fifth Amendment privilege against self-incrimination.

In addition to certain evidentiary rulings made by the Court Appellant now challenges the sufficiency of the evidence presented to the jury to prove that he willfully attempted to evade the assessment of taxes that were due and owing on the class action distribution settlement payments. He also challenges the decision to withhold certain evidence as violations of the government's *Brady* obligations.

SUMMARY OF THE ARGUMENT

First, the evidence was insufficient to support the convictions in this case. Second, the Government violated its obligations under *Brady v. Maryland* and its discovery obligation under the Rules of Criminal Procedure. Third, the Government violated Mr. Cammarata's Fifth Amendment rights by constructively amending the Indictment. Fourth and finally, the Court erred in denying the motion *in limine* filed by the defense and allowing the prosecution to prejudice the jury by offering evidence of Mr. Cammarata's alleged fraudulent behavior which was at issue in a separate prosecution in the Eastern District of Pennsylvania.

ARGUMENT

I. The District Court erred in denying Appellant's Motion for Judgment of Acquittal and, in doing so, also violated Appellant's Fifth Amendment Due Process Right to a Fair Trial based on the Government's failure to prove that Appellant willfully attempted to evade the assessment of taxes for tax years 2015-2019.

The standard of review is plenary or *de novo* because the first argument presents question of law. The Court is empowered to apply its own judgment, without deference to the determination of the district on the issue in question. *Holland v. New Jersey Department of Corrections*, 246 F.3d 267,278 (3d Cir 2001). In reviewing the sufficiency of the evidence, this Court reviews "the evidence in the light most favorable to the government as verdict winner." *United States v. Applewhaite*, 195 F.3d 679, 684 (3d Cir. 1999) (*citing United States v. Stansfield*, 101 F.3d 909, 911 (3d Cir. 1996)). In other words, the "review of the sufficiency of the evidence after a guilty verdict is 'highly deferential.'" *United States v. Hodge*, 321 F.3d 429, 439 (3d Cir. 2003) (*quoting United States v. Hart*, 273 F.3d 363, 371 (3d Cir. 2001)). This Court "must affirm the convictions if a rational trier of fact could have found defendant guilty beyond a reasonable doubt, and the verdict is supported by substantial evidence." *United States v. Coyle*, 63 F.3d 1239, 1243 (3d Cir. 1995).

Tax evasion requires the government to prove beyond a reasonable doubt: (1) an attempt to evade or defeat a tax; (2) an additional tax due and owing; and (3)

willfulness. *See Sansone v. United States*, 380 U.S. 343, 351 (1965) (emphasis added); *see* 26 U.S.C.A. § 7201. The "affirmative act" of evasion can be "any conduct, the likely effect of which would be to mislead or to conceal." *Spies v. United States*, 317 U.S. 492, 499 (1943). Where a defendant proves that he had a good faith belief that he did not violate the tax code, regardless of whether that belief was objectively reasonable, he establishes that he did not act willfully. *United States v. DeMuro*, 677 F.3d 550, 557 (3d Cir. 2012).

The Supreme Court has defined the term willfulness in *Cheek v. United States*, 498 U.S. 192, 200-01 (1991); *United States v. Pomponio*, 429 U.S. 10, 12 (1976) and *United States v. Ashfield*, 735 F.2d 101,105 (3d Cir. 1984).[5] Other courts, though not controlling here, have held that when the underlying tax law at issue in a case is vague or highly debatable, it is difficult, if not impossible for government prosecutors to prove, that a taxpayer willfully attempted to either file a false tax return, or that the taxpayer willfully attempted to evade the assessment of taxes. *See United States v. Critzer*, 498 F.2d 1160 (4th Cir. 1974) (when the underlying tax law is vague or highly debatable, it difficult, if not impossible, to prove that a defendant

[5] The IRS, in this case, had the option of subjecting Appellant to a civil tax audit where he would have been required to prove his ownership of the stocks that he claimed to have assigned to his hedge funds and that expenses that Appellant incurred from his business operations, such as the Bahamian Island, were the type of expenses that could be deducted by Appellant from his world wide income under IRC § 162 and that his investment losses were deductible under IRC § 212. These questions are civil tax inquiries, not inquires that can be fairly pursued in a criminal trial where the Government indicted the Appellant's three week before his trial in Cammarata #2.

acted willfully); *United States v. Garber*, 607 F.2d 92, 93-94. 97-100 (5th Cir. 1979) (defendant may have lacked requisite willfulness since proper tax treatment of money received from sale of her exceedingly rare blood was novel and unsettled question); *and United States v. Harris*, 942 F.2d 1125, 1127-1131-35 & n.6 (7th Cir. 1991) (law on tax treatment received by mistresses from wealthy widower provided no fair warning that failing to report the income would be criminal activity; as such, case law favored proposition that payments should be treated as gifts because criminal prosecutions are not the place for the government to try out pioneering interpretations of tax law).

If Mr. Cammarata reasonably but incorrectly believed that the distribution payments were excludable from taxable income, then his conduct could not have been willful within the meaning of the tax code. *See Cheek*, *supra; cf. United States v. Roth,* 628 F.3d 827, 835 (6th Cir. 2011) ("[T]he Supreme Court has identified only a few areas, such as tax law, where 'ignorance of the law is a defense,' and that is because the tax system is so complex."). In the instant case, Mr. Cammarata did in fact reasonably believe that the distributions – insofar as the payments were meant to compensate him not for lost income, but rather for 8% or less of his recognized loss – were *not* taxable income. Under these circumstances, the record is devoid of evidence of willfulness thereby rendering the evidence insufficient to support the verdict of guilty. It was therefore error to deny the motion for Judgment of Acquittal.

II. The District Court erred in denying Appellant's Motion for a New Trial, pursuant to Fed.R.Crim.P. 33, based upon the government's failure to comply with its discovery obligations under Fed.R.Crim.P. 16(a)(1)(G) and 16(a)(1)(E) and its discovery obligations under *Brady v. Maryland,* 373 U.S. 38 (1963) and *United States v. Bagley*, 43 U.S. 667 (1985).

A. Brady Violations

Under *Brady v. Maryland*, 373 U.S. 83, 87(1963), the Government has an obligation to disclose "evidence favorable to an accused" so long as it is "material either to guilt or to punishment." "To establish a due process violation under Brady . . . 'a defendant must show that: (1) evidence was suppressed; (2) the suppressed evidence was favorable to the defense; and (3) the suppressed evidence was material either to guilt or to punishment.'" *United States v. Pelullo*, 399 F.3d 197, 209 (3d Cir. 2005) (*quoting United States v. Dixon*, 132 F.3d 192, 199 (5th Cir. 1997)). "[E]vidence is material only if there is reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985). As explained, the government withheld a litany of exculpatory information in this case.

1) IRS Forms 1042-S

The undisclosed discovery material included a copy of each payment

confirmation letter attached to each check approved by the District Court overseeing the class action litigation and copies of all IRS Forms 1042-S which the claims administrators sent to the IRS regarding each distribution payment made to Appellant's hedge funds. Had these materials been turned over to Mr. Cammarata, he would have had evidence that the tax obligations had in fact been paid. Certainly, evidence that tax obligations were in fact paid is *material* and *exculpatory* evidence in a prosecution for tax evasion. Nevertheless, these materials were not produced in discovery.

2) Documents underlying Exhibit 1001

The Government also failed to disclose all documents and other materials that related to Appellant's business expenses and investment losses. This information as located in the same computer files as the income information that the Government extracted and transferred into Government Exhibit #1001 would have undercut the Government's case against Mr. Cammarata. For example, certain funds were classified as income, but the exhibit failed to account for business expenses that were deductible under 26 U.S.C. §§ 162 and 212. Said business expense payments including those incurred in connection with operating his Bahamian Island Resort, Sandy Cay, would have reduced and in fact eliminated the amount of taxable income Mr. Cammarata received upon which taxes were due. These would have been deductible under 26 U.S.C. § 162 and/or investment losses under 26 U.S.C. § 212.

Both before and after trial, Mr. Cammarata made a number of requests for the return of his computers or a printout of the data on the computer. The government claims to have given Mr. Cammarata a computer disc which contained his income and expense information and other materials that the government deemed discoverable. Mr. Cammarata was not able to view this information while incarcerated for a number of reasons, including the amount of time needed to meet and review the material with counsel prior to trial. As of the filing of this brief, the government has yet to return Appellant's computer to his parents and Mr. Cammarata has not been able to analyze this exculpatory material independently.

3) Plan of Action Forms

The Government also collected information from carious class action claims administrators, such as the Plan of Action forms from each Class Action Settlement Claims Administrator, during its pretrial investigation in Cammarata #1. The POAs were not disclosed to Mr. Cammarata for use during the tax fraud trial.

The POAs were material to Mr. Cammarata's defense. The POAs would have established that class action distribution payments were made to Mr. Cammarata's three hedge funds after review and approval. Further the POAs would have shown that the distributions were a partial return of capital and that any and all tax obligation was in fact satisfied. The Government's failure to disclose the Plan of Action forms obtained from each class action claims distribution manager violated

the government's *Brady* obligations. The POAs were material to his defense. Had the jury been aware of the tax classification placed upon class action settlement distribution payments, this information could have had a significant effect upon the jury during its deliberations. This information could very well have made the difference between a guilty and not guilty verdict, especially in light of the way in which this case was tried.

In summary, the government violated its *Brady* obligations in this case. The government withheld exculpatory evidence that Mr. Cammarata could have used to show that the violations (if any) were not willful, thereby obtaining an acquittal. Insofar as the government violated *Brady*, Mr. Cammarata's due process rights were violated and a new trial must be granted.

B. Discovery Violations

Insofar as the lower court erred in denying the motion for a new trial, this Court should reverse the judgment of sentence.

The standard of review on a motion for a new trial is abuse of discretion, except where a district court bases its denial of the motion on an application of law, in which case an appellate court's review is plenary. *Curley v. Klem*, 499 F.3d 199, 205-06 (3d Cir. 2007).To show an abuse of discretion, an appellant must show the district court was arbitrary, fanciful, or clearly unreasonable. *See Stich v. United States*, 730 F.2d 115, 118 (3d Cir 1984).

1) Summary of Expert Testimony

In this case, one of the most critical pieces of discovery that the Government failed to provide to Appellant was a written summary of IRS Revenue Thomas Mazur's expert witness's ·anticipated trial testimony. The failure to prepare and produce a written summary as described in Rule 16 denied Appellant the right to confront the Government's expert witness. Agent Mazur, did not express an opinion regarding the accuracy of the tax due and owing that had been computed by another agent not called as a witness by the government. His testimony was therefore inadmissible hearsay similar to the evidence criticized in *Greenberg v. United States*, 280 F.2d 472, 476 (1st Cir. 1960).

Appellant's Sixth Amendment Confrontation Clause Privilege was hampered by the failure of the Government to prepare a written summary of the anticipated trial testimony of Agent Mazur which would have consisted of his opinion, and the basis for his opinion, if that opinion was going to be that Appellant for criminal tax purposes owed appropriately $6 million although tax that the IRS may try to collect from Appellant would be higher in a civil tax audit.

Without an expert witness, defense counsel framed his cross-examination questions as hypotheticals. Agent Mazur conceded that if certain information had been made available by the prosecution team, his trial testimony might differ. The IRS agent who prepared the work product upon which Agent Mazur was Agent Leo

Hughes, a member of the prosecution team who was present in the courtroom throughout the trial.

2) Agent Hughes' Excel Spreadsheet

Agent Hughes 's excel spreadsheet was originally captioned as "Criminal Tax Computation" and marked for identification as Govt. #1004. Defense counsel objected to the admission into evidence on two grounds. First, the defense challenged the admission of the document on the grounds that the title of the document included the word "criminal" before the Appellant had been convicted of a crime. Second, the Government objected to Agent Mazur being used by the Government, as the foundation witness to get Govt. #1004 admitted into evidence, when Agent Hughes was the proper foundation witness. Agent Mazur could only present hearsay testimony regarding the existence of any tax due and owing arising from the five counts charged in the indictment and as such his testimony should have been inadmissible.

In *United States v. Isa Noel*, 905 F.3d 258 (3d Cir 2018), this Court noted that the confrontation clause guarantees a criminal defendant the right to be confronted with the witnesses against him. In this case, Mr. Cammarata contends that he was effectively prohibited from cross examining the Government's tax computation expert, Thomas Mazur, in the absence of written summary of Mr. Mazur anticipated trial testimony that would inform the jury of his opinion regarding the tax due and

owing element of 26 U.S.C. Section 7201. Agent Mazur was not able to offer an opinion regarding the tax due and owing.

3) Exhibit 1001

The Government also violated the Rules of Discovery when it offered Exhibit 1001 into evidence. First and foremost, the chart was created by a lay – not an expert witness. Indeed, Stacy Esimai was not qualified as an expert. Nevertheless, Esimai proceeded to give highly technical, expert testimony about Mr. Cammarata and whether or not his tax returns were false. What's more, the data upon which Esimai relied was not made available (notwithstanding repetitive requests for the same) such that Mr. Cammarata or an expert witness of his choosing could examine the records and test the accuracy of Esimai's conclusions. For this reason (and in addition to the reasons set forth above), Mr. Cammarata was denied a fair trial.

Appellant is entitled to a new trial, if this court does not vacate and set aside the district court's denial of his Motion for a Judgment of Acquittal, based on the Government's violation of the procedural requirements of Rule 16 of the Federal Rules of Criminal Procedure.

III. The United States Violated Mr. Cammarata's Fifth Amendment Rights by Constructively Amending the Indictment During Trial.

The judgment of sentence must be reversed insofar as the government's evidence and trial arguments amounted to a constructive amendment of the indictment. As explained below, while Mr. Cammarata was charged with several

counts of Tax Evasion in violation of Section 7201, the prosecutor's proofs and arguments focused on the falsity of the tax returns filed by Mr. Cammarata.

A Circuit Court "exercise[s] plenary review in determining whether there was a constructive amendment of the indictment and whether there was a variance between the indictment and the proofs at trial." *United States v. Daraio*, 445 F.3d 253, 259 (3d Cir. 2006). The Fifth Amendment provides that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury[.]" U.S. Const. amend. V. Because of this constitutional guarantee, "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him." *Stirone v. United States*, 361 U.S. 212, 217, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960). From this rule comes the general prohibition against constructive amendments. *See United States v. Navarro*, 145 F.3d 580, 585 (3d Cir. 1998) (stating that a constructive amendment deprives a defendant of his Fifth Amendment right "to be tried only on charges presented in an indictment returned by a grand jury" (*quoting United States v. Miller*, 471 U.S. 130, 140, [*532] 105 S. Ct. 1811, 85 L. Ed. 2d 99 (1985))).

"An indictment is constructively amended when, in the absence of a formal amendment, the evidence and jury instructions at trial modify essential terms of the charged offense in such a way that there is a substantial likelihood that the jury may have convicted the defendant for an offense differing from the offense the indictment

returned by the grand jury actually charged." *Daraio*, 445 F.3d at 259-60. An indictment can be constructively amended through "evidence, arguments, or the district court's jury instructions," if they "effectively amend the indictment by broadening the possible bases for conviction from that which appeared in the indictment." *United States v. McKee*, 506 F.3d 225, 229 (3d Cir. 2007) (*quoting United States v. Lee*, 359 F.3d 194, 208 (3d Cir. 2004)). When considering a claim of constructive amendment, the "key inquiry is whether the defendant was convicted of the same conduct for which he was indicted." *Daraio*, 445 F.3d at 260 (quoting *United States v. Robles-Vertiz*, 155 F.3d 725, 729 (5th Cir. 1998)). If a defendant is convicted of the same offense that was charged in the indictment, there is no constructive amendment. *United States v. Patterson*, 348 F.3d 218, 227 (7th Cir. 2003).

The Indictment charged Mr. Cammarata with Tax Evasion under Section 7201. § 7201 "Attempt to evade or defeat tax" provides:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

However, the Government's case focused on the filing of false tax returns under § 7206. That Section provides:

> Any person who—

> (1) Declaration under penalties of perjury. Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or
> * * *
> shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

The government's constructive amendment of its indictment of Appellant started Government's opening statement where the Government agued: "$16 million. That's how much the defendant Cammarata hid from the IRS over the course of five years." N.T. November 1, 2024 at 61:18-19. The Government went further: "And, ladies and gentlemen, because he never told his accountant about that money, he filed false tax returns with the IRS for all five of those years. False tax returns that failed to report $16 million in fraud income that Mr. Cammarata made." N.T. November 1, 2024 at 65:2-6. Again, the Indictment had nothing to do with filing false tax returns. The constructive amendment continued throughout the testimony:

It continued during closing argument. Specifically, the attorney for the Government argued:

- Let's talk for a minute about the tax returns that Mr. Cammarata filed, tax returns that were false. Tr. 1606:9-10.
- And he knew that his tax returns were false when he reported a small amount and eventually zero as income to PB Trade. Tr 1609:3-5.

- So, ladies and gentlemen, when you go back in the jury room and you consider all the evidence, consider the testimony of the witnesses, you consider the text messages, the email exchanges, you consider the tax returns that Mr. Cammarata filed that were false, you consider the millions of dollars that he hid from the IRS, you're going to come to one conclusion. Tr. 1609:6-13.

- So what did they do to support the false claims and the false reports? 1553:17-18.

- So what is the evidence of hiding? Well, number one, he gets millions and millions and millions of dollars from false claims. They go into his entities, especially PB Trade. He doesn't tell his accountant and he files false tax forms. So let's talk about these three things, right. Using other companies to hide the income, not telling his own accountant, and filing false fax returns. Tr. 1560:14-20.

Based on the statute under which Appellant was charging, a taxpayer's attempt to try hide money from the IRS is different than filing a false tax return. Yet, the Government attempted to carry its burden of proof and convince the jury that Mr. Cammarata was guilty by showing that he filed false tax returns.

As explained in *United States v. Fallon*:

> A constructive amendment occurs where the evidence and jury instructions at trial modify essential terms of the charged offense in such a way that there is a substantial likelihood that the jury may have convicted the defendant for an offense differing from the offense the indictment returned by the grand jury actually charged. Trial evidence, arguments, or the district court's own instructions can all form the basis of constructive amendments. A constructive amendment is per se reversible error because it deprives a defendant of his Fifth Amendment right to be tried on charges presented to the grand jury. The "key inquiry" in a constructive amendment claim "is whether the defendant was

convicted of the same conduct for which he was indicted.

United States v. Fallon, 61 F.4th 95, 111 (3d Cir. 2023).[6]

In this case, the government's evidence and arguments focused on the falsity of tax returns rather than a willful attempt to evade taxes. Under the test set forth in *Fallon*, Mr. Cammarata was indeed convicted of different conduct than for which he was indicted. This is a *prima facia* example of a constructive indictment. Mr. Cammarata's Fifth Amendment rights were violated and the judgments of conviction and sentence must be vacated as a result.

IV. The District Court abused its discretion in denying Appellant's Motion in Limine which sought to preclude the Government from presenting the same fraud scheme evidence, offered by the Government in his EDPA fraud trial, in the absence of requiring the Government to make an off er of proof regarding the relevancy of this evidence to any of the elements of Section 7201 given the highly prejudicial impact this evidence could have on the jury in this case.

Rule 404(b) prohibits evidence of a crime "to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). However, "[t]his evidence may be admissible for another purpose, such as proving motive." Fed. R. Evid. 404(b)(2). In determining the admissibility of prior bad acts evidence, a district court must analyze, under the familiar *Huddleston* test, whether the evidence: (1) has a proper

[6]In this case, it is not possible to determine whether the jury convicted Appellant of filing false tax returns in violation of 26 U .S.C. Section 7206(1), or tax evasion which is a violation of 26 U.S.C. Section 7201.

evidentiary purpose under Rule 404(b); (2) is relevant under Rule 402; (3) is of such probative value as to outweigh the prejudice to the defendant as required by Rule 403; and (4) is accompanied by a proper limiting instruction. *Huddleston v. United States,* 485 U.S. 681, 691 (1988). The Third Circuit normally reviews evidentiary rulings for abuse of discretion, but exercises plenary review over "whether evidence falls within the scope of Rule 404(b)." *United States v. Green,* 617 F.3d 233, 239 (3d Cir. 2010); *see also United States v. Lee*, 612 F.3d 170, 186 (3d Cir. 2010).

In Cammarata #2, the Government offered into evidence information regarding Mr. Cammarata's ownership of Sandy Cay, an island resort in one of Bahamian Island. Appellant argued in his appeal in Cammarata's #2, which is still pending before this Court, that the evidence that the government offered was for no reason other than to cast him in a negative light before the jury.

In this case, Mr. Cammarata is entitled to a new trial because the district court erred in denying his motion in limine. The motion sought to prevent the admission of non-relevant and highly prejudicial evidence that was elicited by the Government from various witnesses who testified in Cammarata # 1 instead of focusing its evidentiary inquiry into the issues of whether Mr. Cammarata owned the stock that he claimed to have assigned to his hedge funds. The district court abused its discretion under Rules 403 and 404(b) in admitting into evidence in his tax fraud trial the same evidence, in major parts, that the Government used during its fraud

trial in the Eastern District of Pennsylvania thus making the jury aware of that fraud trial without Mr. Cammarata testifying at the tax trial. This decision, in the absence of requiring the government to make an initial offer of proof was clearly unreasonable.

To protect Mr. Cammarata's Fifth Amendment Right to a fair trial, and to prevent the "prejudicial spillover" from the fraud trial, other measures could have been used by the court to protect the fairness of Appellant's trial through less arbitrary options that were available to the court to limit the unduly prejudicial effects of the fraud evidence, assuming that the Court concluded that some of the same evidence was essential to the Government's tax fraud case at issue here.

For example, a stipulation would have used to convey Appellant receipt of class action distribution payments that were made payable to hedge funds that he owned. The stipulation could have further stated that Appellant did not report the distribution payments as income on his tax returns. The parties could have then presented evidence regarding the issue of whether the distribution payments presented gross income.

To the contrary, the Government was able to retry the fraud case here, and even made references to the fraud during its summation to the jury. The government was able to assassinate Mr. Cammarata's character and invite the jury to find him guilty on that basis rather than on a genuine examination and evaluation of the

relevant and admissible evidence. It cannot be understated how prejudicial this evidence was to Mr. Cammarata and how likely this evidence was to impair his right to a fair trial.

For all of the foregoing reasons, if this Court does not vacate the district judgment of conviction and sentence, Appellant urges the Court tor remand the case, in any event, for a new trial based upon the procedural errors the government prosecutor's which advanced the constructive amendment of the indictment, and the constitutional violation that the district court committed in violation of the Fifth Amendment Due Process Clause and the Sixth Amendment Confrontation Clause Rights. In the absence of requiring the Government to make an offer of proof before admitting the evidence, the district court abused its discretion the district court abused its discretion is failing to weigh the probative value of the fraud evidence against the harmful effects of the testimony that was not part of the tax prosecution case.

CONCLUSION

For all of the foregoing reason, Mr. Cammarata, the Appellant respectfully urge this Court to vacate the district court's order that denied his Motion for a judgment of Acquittal pursuant to Rule 29c) of the Federal Rule of Criminal Procedure or, in the alternative, grant the Appellant a new trial pursuant to his Rule 33 of the Federal Rules of Criminal Procedure.

Respectfully submitted:

/s/ Jack McMahon
Jack McMahon
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139 North Croskey Street
Philadelphia, Pennsylvania 19103
(215) 985-4443
(215) 985-4416 (Fax)

CERTIFICATIONS

1. I hereby certify that this brief was served upon the following parties via ECF:

Paul G. Shapiro, Esquire

Mark E. Coyne, Esquire

David J. Ignall, Esquire

2. I certify that a virus detection program has been run on the file and that no virus was detected. The program used was Norton Antivirus.

3. **Certificate of Compliance with Type-Volume Limitations.** This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because this document contains 7,953 words total. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point font.

4. I, Jack McMahon, certify that I am duly admitted to practice law before the United States Court of Appeals for the Third Circuit.

5. I, Jack McMahon, certify that hard copies of this brief have been served on the Court on the date of the ECF Filing of this Brief.

6. I, Jack McMahon, hereby certify that the briefs are served in compliance with the Court's rules and identical to one another and the electronic

PDF versions.

Respectfully submitted:

/s/ Jack McMahon
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

TRENTON VICINAGE

UNITED STATES OF AMERICA	:	**CRIMINAL NO. 22-639-01**
	:	
vs.	:	**HON. PETER G. SHERIDAN**
JOSEPH A. CAMMARATA	:	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN by JOSEPH A. CAMMARATA, *Pro Se* defendant, that at his request for preparation assistance from undersigned Stand-By Counsel Floyd J. Miller -- an attorney appointed from the CJA Panel Attorney List for the District of New Jersey who assisted the defendant as one of his defense counsels in a criminal tax evasion prosecution in the District of New Jersey -- agreed to draft and file this Notice of Appeal from a final Judgment of Conviction and Sentence entered in this action on the 13th day of May 2024.

Defendant Cammarata is currently incarcerated as a federal prisoner at the New Jersey Monmouth County Correctional Institution located in Freehold, New Jersey. The defendant was advised by stand-by counsel of his right to appeal his conviction and sentence within 14 days following the imposition of sentence which occurred on May 13, 2024.

The defendant asked undersigned Stand-by Counsel to prepare this Notice of Appeal because he is incarcerated with limited access time to a computer within the MCCI.

The defendant informed stand-by counsel that he was going to file a Motion for Reconsideration with the District Court which denied his Motion for a Judgment of Acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure and his Motion for a new trial, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, before the 14-day time limitation elapsed.

Standby counsel advised the defendant, once again, as he was advised on the date that he was sentenced, of his right to file an appeal and that if he, as a *pro se defendant*, was going to file a Motion For Reconsideration that he needed to do so prior to the expiration of the 14-day time limit which terminate on May 27, 2004. Undersigned counsel did not participate in the defendant's drafting and filing of his Motion for Reconsideration.

Counsel further advised Defendant Cammarata that if did not file his motion prior to the expiration of the 14-day time limitation, his motion might be rejected if the Court did not consider his motion as having been timely filed under the mail-box rule. The defendant acknowledged his understanding of this legal uncertainty regarding the issue of whether his pro se motion would be considered as "timely filed" prior to May 27, 2024.

By filing this Notice of Appeal at the request of the defendant, stand-by counsel anticipates that he will be appointed, as CJA counsel to continue his representation of the

defendant before the United States Court of Appeals for the Third Circuit. Undersigned counsel will accept the appointment of CJA counsel for the defendant in his appeal if appointed by the court unless, and until, another attorney is appointed at the defendant's request.

Respectfully submitted,

Floyd J. Miller

FLOYD J. MILLER, Esq
Standby Counsel for
Defendant Appointed Under
The CJA For the District of
New Jersey

AO 245B (Mod. D/NJ 12/06) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v. **CASE NUMBER 3:22-CR-00639-PGS-1**

JOSEPH CAMMARATA

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, JOSEPH CAMMARATA, was represented by FLOYD JAMES MILLER CJA COUNSEL AND MARGARET M. GRASSO CJA COUNSEL.

The defendant was found guilty on counts 1-5 by a jury verdict on 11/15/2023 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date of Offense	Count Numbers
26:7201	TAX EVASION 2015	1/1/2015-10/13/2016	1
26:7201	TAX EVASION 2016	1/1/2016-10/30/2017	2
26:7201	TAX EVASION 2017	1/1/2017-9/26/2018	3
26:7201	TAX EVASION 2018	1/1/2018-10/4/2019	4
26:7201	TAX EVASION 2019	1/1/2019-10/12/2020	5

As pronounced on May 13, 2024, the defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of $500.00 consisting of $100 on each count 1 through 5, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

Signed this 14th day of May, 2024.

Peter G. Sheridan
Senior U.S. District Judge

AO 245B (Mod. D/NJ 12/06) Sheet 2 - Imprisonment

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 72 months – On Counts 1, 2, 3 and 4, the term of imprisonment is 60 months on each count to be served concurrently. On Count 5 the term of imprisonment is 12 months to be served consecutively to Counts 1 through 4. Additionally, Counts 1 through 4 will run concurrently to the ED/PA sentence on 21CR427-1. Count 5 will run consecutively to the ED/PA sentence on 21CR427-1.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends to the BOP that the defendant be designated to Fort Dix Correctional as the facility to serve sentence if there are no security concerns.

The defendant will remain in custody pending service of sentence.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ To _____

At _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 3 years on each of Counts 1 through 5 to be served concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, you must report in person to the Probation Office in the district to which you are released.

While on supervised release, you must not commit another federal, state, or local crime, must refrain from any unlawful use of a controlled substance and must comply with the mandatory and standard conditions that have been adopted by this court as set forth below.

You must submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

You must cooperate in the collection of DNA as directed by the probation officer

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it is a condition of supervised release that you pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release.

You must comply with the following special conditions:

FINANCIAL DISCLOSURE

Upon request, you must provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Office. You must cooperate with the U.S. Probation Officer in the investigation of your financial dealings and must provide truthful monthly statements of your income. You must cooperate in the signing of any authorization to release information forms permitting the U.S. Probation Office access to your financial records.

INTERNAL REVENUE SERVICE - COOPERATION

You must fully cooperate with the Internal Revenue Service by filing all delinquent or amended returns within six months of the sentence date and timely file all future returns that come due during the period of supervision. You must properly report all corrected taxable income and claim only allowable expenses on those returns. You must provide all appropriate documentation in support of said returns. Upon request, you must furnish the Internal Revenue Service with information pertaining to all assets and liabilities, and you must fully cooperate by paying all taxes, interest and penalties due, and otherwise comply with the tax laws of the United States.

MENTAL HEALTH TREATMENT

You must undergo treatment in a mental health program approved by the U.S. Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, or sex offense-specific treatment, as approved by the U.S. Probation Office, until discharged by the Court. The U.S. Probation Office will supervise your compliance with this condition.

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You must not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You must cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you must provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4) You must answer truthfully the questions asked by your probation officer.

5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have fulltime employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e.. anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

STANDARD CONDITIONS OF SUPERVISION

13) You must follow the instructions of the probation officer related to the conditions of supervision.

For Official Use Only - - - U.S. Probation Office

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed)_____
Defendant Date

_____
U.S. Probation Officer/Designated Witness Date

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

FINE

The defendant shall pay a fine of $100,000.00.

This fine, plus any interest pursuant to 18 U.S.C. § 3612(f)(1), is due immediately and shall be paid in full within 30 days of release from imprisonment.

This amount is the total of the fines imposed on individual counts, as follows: On Counts 1 through 5, a fine of $20,000 on each Count.

The Court determines that the defendant does not have the ability to pay interest and therefore waives the interest requirement pursuant to 18 U.S.C. § 3612(f)(3).

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Defendant: JOSEPH CAMMARATA
Case Number: 3:22-CR-00639-PGS-1

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the amount of $6,023,189.00. The Court will waive the interest requirement in this case. Payments should be made payable to the **U.S. Treasury** and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to IRS RACS, Attn: Mail Stop 6261 Restitution, 33 W. Pershing Ave, Kansas City, Missouri 64108.

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to $25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than $1500, to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, v. JOSEPH CAMMARATA	Crim. No.: 3:22-00639 (RK) **OPINION**

KIRSCH, District Judge

THIS MATTER is before the Court on *pro se* Defendant Joseph Cammarata's ("Defendant") Second Motion for Acquittal pursuant to Federal Rules of Criminal Procedure 29 and 33 ("Renewed Motion for Acquittal") and his Motion to Move the Court to Rule on his Renewed Motion for Acquittal ("Letter Motion"). (*See* ECF Nos. 155, 162.) For the reasons below, both Motions are **DENIED**.

I. BACKGROUND

Defendant proceeded to trial by jury with the assistance of stand-by counsel, Floyd Miller, esq. and Margaret Grasso, esq. ("Stand-by Counsel"). (*See* ECF Nos. 13, 15, 43.) After a jury trial presided over by Hon. Peter G. Sheridan (ret.), Defendant was found guilty on five counts of income tax evasion in violation of 26 U.S.C. § 7201 on November 15, 2023. (ECF No. 109.) On November 21, 2023, the Government moved, *inter alia*, to limit Defendant to a single set of post-trial motions to avoid duplicative filings filed by Defendant and Stand-by Counsel. (ECF No. 112.) On December 4, 2023, the Court granted the Government's Motion in part, issuing an Order (the "December 4, 2023 Order") limiting Defendant to one brief on each post-trial Motion and noting that "any brief or writing by defendant outside of the one provided for above shall be

deemed extraneous and stricken unless it is authorized by the Court in advance." (ECF No. 124 at 1.)

Defendant, through Stand-by Counsel, filed his post-trial motions pursuant to Federal Rules of Criminal Procedure 29 and 33 ("First Motion for Acquittal") on January 29, 2024. (*See* ECF No. 134.) On February 13, 2024, Defendant filed a Motion to Dismiss the Indictment. (*See* ECF No. 137.) The Government opposed these motions, and it filed a Motion to strike Defendant's Motion to Dismiss the Indictment. (*See* ECF Nos. 136, 137.) On May 13, 2024, Hon. Peter G. Sheridan (ret.) heard oral arguments on the pending motions before denying both of Defendant's motions from the bench and denying the Government's motion as moot. (*See* ECF No. 148.) On that same day, Defendant was sentenced to 72 months imprisonment—with 60 months on Counts 1 to 4 to run concurrently with Defendant's sentence from the Eastern District of Pennsylvania[1] and 12 months from Count 5 to run consecutively to Defendant's sentence from the Eastern District of Pennsylvania. (ECF No. 150 at 2.) On May 16, 2024, the Court issued a written Memorandum and Order setting forth its rationale and its grounds for its denial of Defendant's posttrial motions. (*See* ECF No. 152.)

On May 25, 2024, Defendant—through Stand-by Counsel—filed a Notice of Appeal. (*See* ECF No. 154.) On May 30, 2024, Defendant filed his Renewed Motion for Acquittal. (*See* ECF No. 155.) On June 5, 2024, the Government filed its Opposition to the Renewed Motion for Acquittal, raising its jurisdictional objection to the same and noting that the "pendency of

[1] On June 8, 2023, in a separate criminal matter, Defendant was sentenced to 120 months of imprisonment after being found guilty at a trial by jury in the Eastern District of Pennsylvania. (Eastern District of Pennsylvania Docket No. 21-cr-427, ECF No. 307 at 3).

[Defendant's] appeal deprives this Court of jurisdiction over the reconsideration motion." (ECF No. 157 at 3.) Defendant's Reply was entered on July 9, 2024. (*See* ECF No. 159.)

This case was reassigned to the undersigned on July 12, 2024. (*See* ECF No. 160.) On August 7, 2024, Defendant filed a Letter Motion requesting that the Court rule on his Renewed Motion for Acquittal (*See* ECF No. 162.) Thus, before the Court today are both the Renewed Motion for Acquittal and a Letter Motion pertaining to the same.

II. STANDARD

"As a general rule, the timely filing of a notice of appeal is an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a district court of its control over those aspects of the case involved in the appeal." *Venen v. Sweet*, 758 F.2d 117, 120 (3d Cir. 1985) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *United States v. Leppo*, 634 F.2d 101, 104 (3d Cir. 1980)). As further explained by the Third Circuit:

> "Divest" means what it says—the power to act, in all but a limited number of circumstances, has been taken away and placed elsewhere. This judge-made rule has the salutary purpose of preventing the confusion and inefficiency which would of necessity result were two courts to be considering the same issue or issues simultaneously.

Venen, 758 F.2d at 120–21. A court may, however, decide a timely motion to reconsider, notwithstanding the filing of the notice of appeal. *United States v. Banks*, 674 F. App'x 121, 124 (3d Cir. 2017).

III. DISCUSSION

These Motions are denied because the Court does not have jurisdiction over the Renewed Motion for Acquittal and the Letter Motion. There is an appeal pending before the Third Circuit,

with motions being filed in the appeal as recently as Monday, August 12th of this week. (Third Circuit Docket No. 24-1983 at ECF No. 17.) The Court lost jurisdiction over matters pertaining to Defendant's conviction once this appeal was filed. *See United States v. Georgiou*, 777 F.3d 125, 145 (3d Cir. 2015) (affirming the district court where it, *inter alia*, denied a motion to unseal filed after a notice of appeal was filed with the Third Circuit and noting that the District Court lacked jurisdiction when defendant-appellant filed his motion to unseal); *see also United States v. Flamer,* No. 08-1421, 2009 WL 237084, at *2 (3d Cir. Feb. 3, 2009) (affirming the District Court where it denied defendant-appellant's motion for discovery material since the motion was filed after defendant-appellant's notice of appeal of his conviction and sentence, "at which time the District Court lost jurisdiction over matters pertaining to the conviction."). Here, Defendant—through Stand-by Counsel—filed his Notice of Appeal from Defendant's final Judgment of Conviction and Sentence on May 25, 2024. (*See* ECF No. 154.) The two Motions before the Court were both filed after the Notice of Appeal's filing.[2] The Renewed Motion for Acquittal was filed on May 30, 2024,[3] and the Letter Motion was filed on August 7, 2024. (*See* ECF Nos. 155, 162.) The Court lacks jurisdiction over the Renewed Motion for Acquittal and the Letter Motion.

[2] A question of the timeliness of the motion filed by defendant on May 30, 2024 (ECF No. 155) was raised in the briefing. Stand-by Counsel noted this in his Notice of Appeal. (ECF No. 154 at 2.) Defendant raises these arguments himself in his motions, invoking the mailbox rule with respect to when his Renewed Motion for Acquittal was filed. (*E.g.*, ECF No. 162 at 1 (arguing his motion was filed on May 24, 2024); *see also* ECF No. 155 at 1 (where Defendant indicates that a separate judicial misconduct complaint was entered into the prison mailbox on May 27, 2024)). The only evidence the Court has as to the actual mailing of the Renewed Motion for Acquittal is the postage date on the envelope of the Renewed Motion for Acquittal, indicating a postmark date of May 28, 2024. (ECF No. 155 at 41.) As discussed at *infra*, since the motion filed by Defendant on May 30, 2024 (ECF No. 155) is more properly styled a "a renewed motion for acquittal" than a motion for reconsideration, the Court will not address arguments as to the timeliness of a motion to reconsider in this case.

[3] The Court also notes that the filing of the Renewed Motion for Acquittal is in direct contravention of the Court's December 4, 2023 Order. (*See* ECF No. 124.) In the December 4, 2023 Order, the Court gave clear directives to Defendant that he "may file a single brief on each post-trial motion." (*Id.* at 1.) It stated that "any brief or writing by [D]efendant outside of the one provided for *above shall be deemed extraneous and stricken unless it is authorized by the Court in advance*." (*Id.*) (emphasis added).

While it is clear to the Court that it lacks jurisdiction to decide both the Renewed Motion for Acquittal and the Letter Motion, the Court briefly addresses a question of semantics. Defendant styles the Renewed Motion for Acquittal as a "motion for reconsideration." Upon review, the Renewed Motion for Acquittal contains largely recycled facts from Defendant's First Motion for Acquittal—coupled with Defendant's desire to "put on the record what he believes to have (sic) an unfair trial, judicial errors in denying post-trial motions, improper sentencing hearing," while raising the specter that the trial court had some "pre-existing medical condition that may have impacted the post-trial motion procedures and sentencing."[4] (ECF No. 155 at 2.) The Court harbors serious doubts as to whether such a Motion is properly labeled a "motion for reconsideration."

Even if the Court were to consider it as a motion for reconsideration, Defendant's arguments fail. Defendant appears to raise several different arguments not explicitly addressed in the previous briefing. These arguments surround: (1) the Government's purported withholding of 1042 tax forms; (2) complaints regarding grand jury testimony; (3) complaints regarding the constructive amendment of the indictment by the Government; (4) complaints about the use of the word "fraud" at the District of New Jersey trial. (ECF No. 155 at 7, 21–28.) These arguments do not meet the standard required for a motion for reconsideration.

A motion for reconsideration is appropriate only where there is "'(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [made its initial determination on the underlying motion]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.'" *United States v. Dfouni*, 856 F. App'x 388, 389

[4] To this last point, among the 41 pages of briefing in the Renewed Motion for Acquittal, Defendant levels conclusory accusations against the judge presiding over his trial in the District of New Jersey, the Hon. Peter G. Sheridan (ret.). (ECF No. 155 at 3–4; ECF No. 162 at 1.) These arguments lack support in the factual record.

(3d Cir. 2021) (quoting *United States ex rel. Schumann v. AstraZeneca Pharm. L.P.*, 769 F.3d 837, 848–49 (3d Cir. 2014)). Defendant does not argue (as he cannot) that there was an intervening change in the law or the need to correct an error of law or fact. Rather, he appears to argue that this is "new evidence." This evidence is not new. As pointed out by the case law, where Defendant's arguments are based upon information or evidence that was in Defendant's possession when he filed his First Motion for Acquittal, they are not "new" evidence. *Dfouni*, 856 F. App'x at 390 (finding that a settlement agreement that was appended to a motion for reconsideration did not qualify as "new evidence" given that defendant "had obtained the settlement agreement prior to submitting" his initial motion.) Here, Defendant was in possession of all of the information or evidence he puts forth prior to the filing of his First Motion for Acquittal on January 29, 2024. There is no intervening change in the controlling law. There is no need to correct a clear error of law or fact or prevent manifest injustice. Defendant fails to meet any of the three factors necessary to grant a motion for reconsideration. Thus, although this Court lacks jurisdiction to consider the Renewed Motion for Acquittal and Letter Motion—even if it did have jurisdiction—Defendant's arguments fail.

CONCLUSION

For the foregoing reasons, Defendant's Renewed Motion for Acquittal (ECF No. 155) and his Letter Motion (ECF No. 162) are **DENIED**. An appropriate Order will accompany this Opinion.

ROBERT KIRSCH
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2024