

NO. 24-1983

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,
Appellee

v.

JOSEPH CAMMARATA,
Appellant

APPEAL FROM JUDGMENT OF CONVICTION
IN CRIMINAL NO. 22-639 IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Sat Below: Honorable Peter G. Sheridan, U.S.D.J.

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JURISDICTIONAL STATEMENT

Because the defendant was charged in an indictment with violations of federal criminal law, the district court had subject matter jurisdiction over the case under 18 U.S.C. § 3231. Based upon the timely filing of a notice of appeal from the order of judgment in a criminal case entered on May 14, 2024, this Court has jurisdiction over this matter under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Did the district court plainly err in failing to grant a judgment of acquittal due to an alleged insufficiency of proof of willfulness where Cammarata failed to preserve that argument in his post-trial motions and there was overwhelming evidence of guilt?

2. Did the district court abuse its discretion in admitting evidence of the fraudulent source of the income on which Cammarata evaded his income taxes, where that evidence was intrinsic to the charges and not unduly prejudicial?

3. Did the district court plainly err in failing to grant a new trial on Cammarata's constructive amendment argument where the acts proven at trial were the same as those alleged in the indictment?

4. a. Where Cammarata told the district court that he wished to proceed to trial despite what he claimed were discovery deficiencies, and where he represented that the allegedly unavailable discovery was not relevant to his defenses, did he waive any new trial argument based on those alleged deficiencies?

b. Did the district court abuse its discretion in rejecting Cammarata's request for a new trial given its finding that the government had complied with its discovery obligations?

STATEMENT OF THE CASE

I. Procedural History

On September 22, 2022, a grand jury in the District of New Jersey returned an indictment charging Joseph Cammarata with five counts of tax evasion in violation of 26 U.S.C. § 7201. PSR ¶ 1. Those charges arose from Cammarata's efforts to evade and defeat income taxes due and owing by himself and his wife for tax years 2015 through 2019. *Id.* at ¶¶ 1-5.

At the time of his indictment on the tax evasion charges, Cammarata was being held in pretrial detention pending a trial on fraud and money laundering charges in the Eastern District of Pennsylvania. *United States v. Cammarata*, Docket No. 21-427 (E.D. Pa.) (the "fraud case").

Following his convictions and sentencing in the fraud case, Cammarata proceeded to trial on the tax evasion charges. Although he originally sought and obtained appointed counsel under the Criminal Justice Act, Cammarata later was granted the right to represent himself. DDE ##7, 13, 40, 43-45, 70-71, 84. The district court permitted Cammarata to proceed with hybrid representation. SAppx10-16.

Cammarata's trial began on October 30, 2023. On November 15, 2023, the jury found him guilty on all five counts of the indictment. Cammarata filed a motion under Rules 29 and 33 on January 29, 2024.

DDE #134. That counseled motion included a section drafted by Cammarata on his own behalf. DDE #124. He also filed a *pro se* motion to dismiss the indictment. DDE #137. By order and memorandum dated May 16, 2024, the district court denied Cammarata's post-trial motions. DDE ##149, 152.

Sentencing was held on May 13, 2024. The district court calculated Cammarata's Sentencing Guidelines range as 87 to 108 months, PSR ¶ 93, and imposed a sentence of 72 months' imprisonment, 12 of which were to be served consecutively to the sentence that he was already serving as a result of his fraud convictions, along with three years' supervised release, a \$100,000 fine, restitution, and a \$500 special assessment.

On May 25, 2024. Cammarata filed a timely notice of appeal. Thereafter, on May 30, Cammarata filed a motion in the district court for "reconsideration" of his post-trial motions, which the district court denied. DDE ##155, 163, 164.

II. Statement of Facts

The Alpha Plus Securities Fraud Scheme

Cammarata and his two co-conspirators, Erik Cohen and David Punturieri, carried out a massive securities fraud scheme during at least 2014–2021. The three men carried out this scheme using Alpha Plus

Recovery LLC (“Alpha Plus”), a securities class action claims aggregator. See PSR ¶¶ 14-15. Alpha Plus submitted thousands of claims to claims administrators across the United States, purportedly on behalf of clients seeking damages from securities class action lawsuits or SEC enforcement actions. *Id.*; SAppx516-21, 936, 1393-95.

Both types of class action settlements result from the resolution of securities fraud cases, brought either by private class action plaintiffs or the SEC. See SAppx332-33, 517-21. In either case, the settlement of the underlying securities case produced a fund of money, often large, that had to be distributed among a class of persons harmed by the conduct giving rise to the litigation. *Id.* A court-approved professional firm, the claims administrator, managed each fund. It was responsible for identifying claimants, validating submitted claims, calculating payments, and issuing checks. *Id.*

Although Alpha Plus had some legitimate clients and conducted some legitimate business, the bulk of its filings, and the vast majority of its income, was on account of three alleged “clients” of Alpha Plus: Nimello Holding LLC (“Nimello”), Quartis Trade and Investment, LLC (“Quartis”), and Inversiones Invergasas SAS (“Invergasas”). SAppx521-22, 527-31, 566-74, 1393-95.

Cammarata and his co-conspirators submitted thousands of claims to claims administrators on behalf of their purported clients, Nimello, Quartis, and Invergasa. PSR ¶ 29; SAppx936, 1394-98. In making these claims, Cammarata and his conspirators falsely represented that these “clients,” had actually purchased the subject shares themselves during the class period. SAppx1283-92. To support these false assertions, the three men offered a fabricated backstory to explain the extraordinarily large numbers of trades by these otherwise unknown entities: that the three “client” companies were foreign hedge funds and active traders. PSR ¶¶ 22, 25; SAppx225-27, 706-09, 2053-56.¹

In truth, Cammarata and his co-conspirators controlled the purported “clients”; and the three firms had never engaged in the trading of any of the securities involved in the class action settlements to which they submitted their claims. SAppx946-52, 1283-96. In fact, the “client” companies were actually shells that had never engaged in trading *any*

¹ In his brief, Cammarata repeats the false hedge fund assertion more than two dozen times. *See e.g.* Br. 7, 12-13, 15-16, 23-24, 34-35. Despite its frequent appearance, Cammarata offers not a single record citation in support. In fact, the record is replete with evidence, including Cammarata’s *pro se* admission, establishing that the three entities were never hedge funds. *E.g.*, SAppx155.

securities. *Id.* Nonetheless, the fake clients were among the highest-volume submitters of securities class action claims. SAppx195-96, 217-18.

To support its claims, Alpha Plus generally submitted spreadsheets to claims administrators showing the alleged trading activity by the three “clients.” SAppx191. In a number of cases, claims administrators asked Alpha Plus to supply supporting documentation for the trading activity. *See e.g.* SAppx219-20, 225-34, 368. These requests generally meant that the claims administrators wanted to see some evidence, usually from the executing broker, that Alpha Plus’s clients actually owned the shares underlying the submitted claims. *Id.*

Because Nimello, Quartis, and Invergasa had never traded any of the shares for which they had submitted claims, Cammarata and his two co-conspirators created false documents to submit to the administrators. SAppx5438-49, 577-79, 685-88, 1296-97, 1304-06. These included fabricated broker statements and position reports, often from SpeedRoute, a broker-dealer founded by Cammarata in 2010, sold by him in 2015, and from which he was fired in 2018. *Id.*; SAppx549-50, 577-79, 1142-43, 1150, 1155-56, 1296-97, 1304-06, 1356-57.

In addition to fabricated reports, the conspirators also sent to administrators fake email chains to make it falsely appear that the claims

submitted in the names of Nimello, Quartis, and Invergasa had originated from independent legitimate clients instead of from the defendants.

SAppx644-46, 957-58.

Cammarata also used emails to keep the three conspirators coordinated. In one of these, he openly worried that their scheme would be discovered and that he would be sent to jail. SAppx655-57.

Cammarata frequently used his expertise and industry knowledge in order to allay suspicions that had arisen among claims administrators about Alpha Plus's claims. SAppx634-35, 660-61. In such cases, Cammarata pretended to be entirely independent of Alpha Plus, so that he could answer questions, and verify the accuracy of the false claims, as a purportedly "independent authority." *Id.*

One claims administrator employee to whom Cammarata portrayed himself as an independent authority was actually working with the FBI, and this employee recorded their interactions. SAppx329, 398, 428, 460-64. The undercover employee repeatedly pressed Alpha Plus to put him in touch with the control persons at "clients" Nimello, Quartis, and Invergasa. SAppx436-45, 460-61. Ultimately, he told Punturieri that his firm would be rejecting all claims on behalf of those clients unless he was able to speak to the relevant control persons. SAppx378-83. When it became clear to

Cammarata that this claims administrator employee was a serious problem, he proposed to visit the employee at his home and pay him a \$1 million bribe to convince him not to report them to the authorities. SAppx773-76.

The Fraud Scheme Generated \$40 Million in Proceeds

Alpha Plus began making false claims on behalf of Quartis in late 2014, Nimello in 2015, and Invergasa in 2019. SAppx633, 655-58, 732-33, 2057. Alpha Plus continued to reap profits from its false claims up through at least 2020. SAppx2057.

Alpha Plus received more than \$40 million, from 397 different settlement funds, for the false claims it submitted in the names of Quartis, Nimello, and Invergasa. SAppx2057. The majority of those proceeds went from Alpha Plus bank accounts to accounts in the names of entities controlled by the defendants, with Cammarata receiving approximately \$18.9 million during January 2015–October 2020. SAppx2058, PSR ¶ 37. Most of Cammarata’s fraud proceeds flowed through accounts in the name of PB Trade, an entity that Cammarata controlled. *See* SAppx580-81, PSR ¶ ¶ 30, 31, 38.

Cammarata Evaded Income Taxes on his share of the Fraud Proceeds.

The proceeds of a fraud scheme represent income in the hands of any person receiving them. This fact was confirmed without contradiction by

Cammarata's personal accountant, the IRS expert revenue agent, and the defense's expert accountant. SAppx1098, 1436, 1561-63.

Of the more than \$18 million in illicit profits that Cammarata extracted from Alpha Plus, he failed to report the vast majority—more than \$16 million—on his federal income tax returns. PSR ¶ 21. Giving Cammarata credit for all of the income that he reported in each of the charged years, and giving him credit for all of the deductions that he claimed in his tax returns, the fraud proceeds that Cammarata received from Alpha Plus, but did not report on his returns, led to substantial deficiencies in his taxes. PSR ¶ 21. For the charged years, Cammarata's total tax deficiency was more than \$6 million, with annual deficiencies ranging from more than \$590,000 to more than \$1.9 million. *Id.*

Cammarata did not merely fail to report the vast bulk of the fraud income that he obtained from the Alpha Plus scheme. He also undertook affirmative measures during the charged years to keep the IRS from learning the true extent of his income. First, and most basically, Cammarata kept the bulk of his illicit earnings from the accountant whom he retained to prepare and file both his personal tax returns and the returns of the various corporations and partnerships through which he operated. Cammarata furnished his accountant his personal income and expense

figures and, with one exception, the income and expense figures for all of his corporations and partnerships. SAppx1014-19. For that last entity, Cammarata's accountant had access to the entity's financial records and used them to determine that entity's income and expenses himself. SAppx1056-59, 1087-90. Tellingly, the only entity that reported income derived from the Alpha Plus fraud was the entity whose financial accounts were prepared by the accountant. SAppx2059. Most of the remaining fraud income was kept from him. SAppx1030, 1043, 1053-54, 1078-83, 1092-93.

Second, and relatedly, Cammarata carefully vetted the income and expense information before it was sent to the accountant, and that he made sure that the fraud proceeds were almost entirely omitted. SAppx586-87, 1341-45. Indeed, Cammarata disparaged one of his co-conspirators for accurately reporting the conspirator's portion of the fraud income. *Id.*

Third, Cammarata grossly inflated his deductions and expenses in order to reduce his tax payments for even the portion of his income that he did report. As claimed in Cammarata's returns, and as detailed by Cammarata's accountant, Cammarata claimed millions of dollars of deductions on specious grounds. For example, Cammarata claimed millions of dollars of marketing expenses for entities that did not do marketing and whose total expenses were an order of magnitude less. SAppx593-602, 610-

12. Likewise, one of Cammarata's returns claimed a \$411,000 deduction for "service funding," a nonsense phrase that even Cammarata's co-conspirator could not understand. *See* SAppx611-12. In addition, Cammarata undertook such other measures as diverting income into corporate accounts and paying his personal expenses from corporate accounts in an effort to hide his fraud income from the government. SAppx603-04, PSR ¶¶ 30, 33, 38.

STATEMENT OF RELATED CASES

On February 24, 2025, this Court affirmed Cammarata's convictions and sentence in the fraud case but remanded for redetermination of forfeiture and restitution. *United States v. Cammarata*, 129 F.4th 193 (3d Cir. 2025). On June 3, 2025, this Court granted the defendant's petition for panel rehearing "limited to the restitution issue."

Cammarata's co-defendants each pled guilty to mail and wire fraud and money laundering conspiracy offenses. *Id.* at 204. They also pleaded guilty to informations charging them with tax offenses. *United States v. Cohen*, No. 22-355 (E.D. Pa); *United States v. Punturieri*, 22-353 (E.D. Pa.). Neither appealed.

Cammarata filed two bail appeals in this Court concerning the fraud case, Nos. 22-1485 and 22-2779. The district court's detention orders were affirmed in both appeals.

Cammarata was a defendant in a parallel SEC civil action, *SEC v. Cammarata*, Civil Action No. 21-4845 (E.D. Pa.). The district court entered summary judgment against Cammarata. Cammarata has filed an appeal, No. 24-1381, that has been stayed.

Cammarata also sued various government officials and agencies.

Cammarata v. Donnelly et al., Civil No. 24-1000 (D.N.J.). Although service has never been made, that action remains pending.

SUMMARY OF ARGUMENT

1. Although he filed post-trial motions in the district court, Cammarata did not raise a sufficiency argument addressed to his state of mind, instead focusing on a now-abandoned claim that the government had failed to prove the existence of a tax due and owing. Consequently, Cammarata's current sufficiency argument, addressed to proof of his willfulness, is reviewed for plain error. Here, there was abundant of proof that Cammarata knew his fraud proceeds were taxable and undertook a variety of actions to hide that income from the IRS. Thus, there was no error, plain or otherwise, in not granting a judgment of acquittal on this ground.

2. The district court acted well within its considerable discretion in admitting evidence of the fraudulent source of the income on which Cammarata evaded his income taxes. That evidence directly proved two contested elements of the tax evasion charges: (i) that there was a significant tax deficiency; and (ii) that Cammarata had acted willfully. This rendered the government's evidence "intrinsic" to the charges and brought it outside the ambit of F.R.E. 404(b). At the same time that it was highly probative, the government's source evidence posed a negligible risk of unfair prejudice. It was, therefore, properly admitted.

3. Because Cammarata failed to timely raise a constructive amendment argument before the district court, it is reviewed here only for plain error. There was no error, much less plain error, because the challenged acts proven by the government at trial were facially alleged in the indictment.

4. Although the government had provided complete discovery to Cammarata's counsel, Cammarata contended that he had not had personal access to all of that discovery. He also believed that there existed other relevant documents outside the government's possession that he had not been able to access. Although he complained about these alleged deficiencies, he told the district court that he wished to proceed to trial and that the inaccessible evidence was not relevant to his defenses. Based on those representations, the case proceeded to trial. Cammarata's representations constituted a waiver of any claim for a new trial on those grounds.

Even apart from Cammarata's waiver, the district court did not abuse its discretion in rejecting his request for a new trial. The trial court repeatedly and consistently found that the government had fully complied with its discovery obligations and Cammarata cannot show that its findings of fact were clearly erroneous. Indeed, Cammarata himself repeatedly

insisted that the supposedly missing materials had been found among the government-produced discovery. In any event, Cammarata failed to establish the elements of a *Brady* violation for any discovery issue.

ARGUMENT

The Federal Rules of Appellate procedure set minimum standards for appellants' briefs. These requirements promote justice by assuring that the issues are fairly presented so that the appellee can respond and this Court can adjudicate the issues sought to be raised. At a minimum, appellate briefs must provide citations to the actual record, without which appellate courts would be obliged to sift through the record to find support for a party's arguments. *See SEC v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992). For the same reasons, an appellant must supply "a proper record on appeal." *Rios v. Bigler*, 67 F.3d 1543, 1553 (10th Cir. 1995).

Here, Cammarata failed in these most basic obligations, filing a brief that is all but devoid of citations to the record of his trial. Moreover, despite raising a challenge to the sufficiency of the evidence used to convict him, he neglected to include in his appendix any of the relevant transcripts or exhibits upon which his claim turns. *See Fed. R. App. P. 10(b)(2)* (where he makes a challenge to the sufficiency of the evidence, "the appellant *must* include in the record a transcript of all evidence relevant to such finding or conclusion.") (emphasis supplied). In fact, Cammarata's statement of the facts is, by his own admission, drawn from outside the record of the proceedings from which he has appealed. Br. 15, n.3.

Those deficiencies could justify “dismissing the appeal.” Fed. R. App. P. 3(a)(2); *see, e.g., Woods v. Thieret*, 5 F.3d 244, 245 (7th Cir. 1993); *Abood v. Black*, 752 F.2d 548, 550 (11th Cir. 1985) (per curiam); *cf. United States v. Davis*, 60 F.3d 1479, 1481-82 (10th Cir. 1995) (declining to address issues on appeal for which the defendant did not provide necessary trial transcripts). Nonetheless, despite the difficulties posed by the overlapping deficiencies in his brief, the government has done its best to divine the issues and brief them accordingly.

I. THE DISTRICT COURT PROPERLY DENIED CAMMARATA’S MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29

Standard of Review

The Court's review of the sufficiency of the evidence is “highly deferential.” *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 430 (3d Cir. 2013) (en banc). The question is whether, “after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979).

Where, as here, the defendant did not raise his current challenge in his motion for judgment of acquittal, this Court reviews for plain error. *United States v. Gordon*, 290 F.3d 539, 547 (3d Cir. 2002). “A conviction

based on insufficient evidence is plain error only if the verdict ‘constitutes a fundamental miscarriage of justice.’” *United States v. Thayer*, 201 F.3d 214, 218-19 (3d Cir. 1999), quoting *United States v. Barel*, 939 F.2d 26, 37 (3d Cir. 1991). Such an error requires a defendant to establish that the mistake was so clear that “the trial judge and prosecutor were derelict in in countenancing it, even absent the defendant's timely assistance in detecting it.” *United States v. Wright-Barker*, 784 F.2d 161, 171 (3d Cir. 1986) (cleaned up).²

Discussion

Cammarata argues that the government failed to establish the willfulness element of his tax evasion charges. *See* Br. 19-21. He claims that he preserved this issue in his post-trial motions. *See* Br. 7. Because, however, the argument that Cammarata now presents is entirely different from the one that he pressed in the district court, his current argument is

² It is the defendant's burden to establish plain error. *United States v. Olano*, 507 U.S. 725, 734-35 (1993). Under more typical circumstances, to do so he must prove that (1) the court erred; (2) the error was obvious under the law at the time of review; and (3) the error affected substantial rights, that is, the error affected the outcome of the proceedings. *Johnson v. United States*, 520 U.S. 461, 467 (1997). If all three elements are established, the Court may, but need not, exercise its discretion to award relief. *Id.* That discretion should be exercised only in cases where the defendant is “actually innocent” or the error “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Olano*, 507 U.S. at 736, quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936).

reviewed only for plain error. Here, there was no error, much less plain error.

A. Cammarata Failed to Preserve His Current Insufficiency Argument.

In his post-trial motions, Cammarata argued at length that the government had failed to prove tax evasion because it had not established what he called the “tax due and owing” element. *See* SAppx1877-82, 1885-1901. Cammarata’s *pro se* reply memorandum, and his *pro se* “motion to dismiss the indictment,” followed precisely the same theme. *See* SAppx2007, 1976. Throughout, Cammarata argued that the government had failed to prove its case because it had not disproved the possibility that Cammarata had other legitimate deductions, which he never listed on his tax returns, that might have reduced or eliminated his tax liability. *See e.g.* SAppx1896-97.

Responding to the sole sufficiency issue that Cammarata raised, the district court rejected Cammarata’s “due and owing” argument as a matter of law. SAppx2047-48. Relying on a line of Third Circuit precedent, the court concluded that the government was not required to disprove the existence of other possible tax deductions: “It is well settled that once the government establishes unreported income of the defendant and allows deductions claimed by him in his tax return and others that it can calculate

without his assistance, the burden is on the defendant to prove that he had other allowable deductions which were not shown in his return.” *Id.* (quoting *United States v. Stayback*, 212 F.2d 313, 317 (3d Cir. 1954)).

Because the government gave Cammarata credit for all of his listed tax deductions, and because it also produced “a multitude of evidence” of Cammarata’s evaded income, the district court concluded that the prosecution had satisfied its burden of proof. SAppx2048. It therefore refused to “usurp the role of the jury by deciding otherwise under Rule 29.” *Id.* Cammarata has not pursued the “tax due and owing” issue on appeal.

“[F]or parties to preserve an *argument* for appeal, they must have raised the same argument in the District Court—merely raising an *issue* that encompasses the appellate argument is not enough.” *United States v. Joseph*, 730 F.3d 336, 337 (3d Cir. 2013) (emphasis in original). Thus, raising an “issue” (here, whether the government’s evidence of tax evasion was sufficient) is not sufficient to preserve all “arguments” in support of that claim. To preserve an argument, “the argument presented in the Court of Appeals must depend on both the same legal rule and the same facts as the argument presented in the District Court.” *Joseph*, 730 F.3d at 342.

Although *Joseph* arose in the context of a pretrial suppression motion, this analysis applies more generally to the preservation rules of

Federal Rules of Criminal Procedure 51 and 52. *See United States v. Lingala*, 91 F.4th 685, 697 (3d Cir. 2024). Indeed, Rule 51(b) specifically states that to preserve a claim of error a party must inform the trial court of “the party's objection to the court’s action and the grounds for that objection.” *See also, e.g., Puckett v. United States*, 556 U.S. 129, 134 (2009).

As this Court has instructed, “[t]rial court proceedings are the ‘main event,’ and not simply a ‘tryout on the road’ to appellate review.” *United States v. Dowdell*, 70 F.4th 134, 141 (3d Cir. 2023). Having insisted before the district court that the government failed to prove a “tax due and owing” based on the possible existence of deductions and exemptions that he had never claimed on any of his tax returns, Cammarata cannot now use those contentions to preserve his current claim that the government failed to prove his state of mind. Instead, Cammarata’s new argument is reviewed in this Court for plain error.

B. Cammarata’s Sufficiency Argument Fails Under Any Standard of Review.

In this Court, Cammarata maintains that the government’s proof of his willfulness was so lacking that the district court should have entered judgment in his favor. Br. 19-22. He offers a logical syllogism that begins with an unassailable proposition of 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.” Br. 21. Cammarata next asserts that his hypothesized innocent state of mind actually existed: “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.” *Id.* He therefore concludes that he was entitled to a judgment of acquittal. *Id.*

The fundamental problem with Cammarata’s argument is that it depends on a state of facts with no support in the trial record. Apart from his counsel’s *ipse dixit* assertion, Cammarata’s brief offers literally no support for its foundational claim about Cammarata’s beliefs: no record citations, no testimony, no documents, and no exhibits. The unsworn extra-record factual avowals of a party’s counsel do not come close to establishing that no “rational trier of fact could have found proof of guilt beyond a reasonable doubt.” *See Caraballo-Rodriguez*, 726 F.3d at 430 (quoting *United States v. Brodie*, 403 F.3d 123, 133 (3d Cir. 2005)). *A fortiori*, such assertions cannot meet the virtually insurmountable plain error burden of establishing an absence of evidence so manifest that both the district court

and the government were “derelict in in countenancing it.” *Wright-Barker*, 784 F.2d at 171.

Cammarata’s failure to offer even the least bit of evidentiary support for his asserted belief that fraud payments from Alpha Plus were not taxable is entirely understandable. Cammarata did not testify, and so there was no first-hand evidence about his state of mind at the relevant time. Cammarata did, however, cross-examine his former Alpha Plus partner, Eric Cohen, about Cammarata’s past statements. Cohen acknowledged that Cammarata had told him multiple times that class action settlements were not taxable. SAppx896-97. However, Cohen explained that these statements were merely “the excuse we were supposed to give,” and that the real reasons for not reporting the fraud income were so that they could “keep more money” and “hide from the IRS.” *Id.* at 942. Indeed, in a prescient foretelling of his current appeal, Cammarata told Cohen that if they were ever caught Cammarata would claim that he had had offsetting losses. SAppx585.

Cohen’s testimony about Cammarata’s real reasons for evading taxes was corroborated by a wealth of other record evidence. First, Cammarata’s accountant, who handled both his personal and business tax returns, testified that Cammarata kept him in dark about the massive inflows of

funds that Cammarata received each year from Alpha Plus through his personal corporation, PB Trade. SAppx1053-54, 1079-83, 1092-98. In fact, although the accountant was well aware that fraud proceeds were reportable as income, Cammarata never asked him for advice on that question. SAppx1098.

Second, both of Cammarata's partners testified that Cammarata counseled them to underreport their fraud income. SAppx583, 586-87, 1344-46. In fact, Cammarata berated one of the partners who persisted in reporting his fraud income, calling him stupid, and worrying that his tax accuracy would get them all caught. SAppx586-87, 612, 1341-45. They also testified that Cammarata personally adjusted the income and expense numbers before the three men sent the figures to Cammarata's accountant. SAppx586, 1341-45.

Finally, there was the underlying financial logic of Cammarata's situation. Because the "client" companies had never done any actual trading, Cammarata never suffered any stock trading losses. SAppx566-67. As a result, all class action payments were pure profit, and necessarily represented income. SAppx1436, 1562-63. Cammarata, of all people, knew these payments were all gain, and thus his failure to declare them on his tax returns was willful.

On this record, a rational jury easily could, and actually did, find that Cammarata acted willfully in evading his federal income taxes. The district court did not commit error, much less plain error, in refusing to usurp that determination. That decision should be affirmed.

II. THE DISTRICT COURT PROPERLY ADMITTED EVIDENCE OF THE ALPHA PLUS FRAUD AS INTRINSIC TO THE CHARGES.

Standard of Review

This Court reviews a ruling to admit or exclude evidence, if based on a permissible interpretation of the rules, for an abuse of discretion. *United States v. Saada*, 212 F.3d 210, 220 (3d Cir. 2000).

Discussion

Cammarata claims that the district court violated Rule 404(b) by admitting evidence of the Alpha Plus fraud at his tax evasion trial. Br. 33-36. Rule 404(b), however, is entirely inapplicable where evidence is “intrinsic” to the charged crimes, because evidence that is truly intrinsic “does not constitute a prior bad act at all.” *Cammarata*, 129 F.4th at 212 (cleaned up). Here, proof of the source of Cammarata’s concealed income was so central to the tax evasion charges that proof of the fraudulent Alpha Plus scheme was intrinsic to charges as a matter of law. Indeed, that evidence was indispensable to the government’s case at trial. Thus, the evidence was necessarily admissible as part of the government’s case in chief, and Cammarata’s motion to exclude it from the trial was properly denied.

A. Evidence of the Fraudulent Source of Cammarata’s Unreported Income Was Intrinsic to Cammarata’s Tax Evasion Charges and Therefore Was Admissible without Regard to Rule 404(b).

As this Court noted in its recent affirmance of Cammarata’s fraud and money laundering convictions, Rule 404(b) has no application to evidence that is “intrinsic” to the charges against a defendant. *Cammarata*, 129 F.4th at 212. Indeed, intrinsic evidence may be of such value to the truth seeking function that it is automatically admissible despite its potential for prejudice. *United States v. Schneider*, 801 F.3d 186, 201 (3d Cir. 2015) (“Even if the evidence is extremely prejudicial to the defendant, the court would have no discretion to exclude it because it is proof of the ultimate issue in the case.”) (quoting *United States v. Hoffecker*, 530 F.3d 137, 189 (3d Cir. 2008)).

Evidence is “intrinsic” to a criminal charge if: (1) it “directly proves” the charged offense; or (2) it constitutes “uncharged acts performed contemporaneously with the charged crime” that “facilitate the commission of the charged crime.” *Cammarata*, 129 F.4th at 212 (quoting *United States v. Green*, 617 F.3d 233, 248-49 (3d Cir. 2010)). Here, evidence of Cammarata’s fraud is intrinsic under both of *Green*’s categories.

The fraud case evidence was intrinsic as proof of the charged offenses

In *Cammarata*, this Court admitted evidence of Cammarata's failure to report his fraud income as proof of Cammarata's knowledge that "the funds were unlawfully obtained." *Cammarata*, 129 F.4th at 212. It therefore constituted "circumstantial evidence offered to prove an element of wire fraud," and consequently "fits neatly into the first category of intrinsic evidence." *Id.*

Had the requirements of venue permitted, the logical interrelationship between the fraud and tax case evidence would have warranted the trial of both sets of charges in a single proceeding. In the same way that this Court has already held that the tax evidence was permissibly admitted in the fraud trial, so too the fraud evidence was appropriately admitted in the tax case.

In this case, Cammarata was charged with evading his taxes for five years by concealing, and failing to report, more than \$16 million of fraud income that he reaped from Alpha Plus. To prove tax evasion in violation of 26 U.S.C. § 7201, the government had to prove, among other things, "the existence of a tax deficiency." *United States v. Boulware*, 552 U.S. 421, 424 (2008). To prove a tax deficiency, "the government must show first that the

taxpayer had unreported income, and second, that the income was taxable.” *United States v. Abodeely*, 801 F.2d 1020, 1023 (8th Cir.1986).

Not all gains are taxable. *See e.g. Boulware*, 552 U.S. at 425. *See also United States v. Sallee*, 984 F.2d 643, 647 (5th Cir. 1993) (receipt of loan proceeds is non-taxable). Thus, in order to show that a particular receipt of wealth by a defendant in fact constituted “taxable income,” the government needs to show the source from which the defendant’s “unreported income was derived.” *United States v. Vannelli*, 595 F.2d 402, 405-06 (8th Cir. 1979); *see United States v. Carrillo*, 561 F.2d 1125, 1127 (5th Cir. 1977) (“In order to demonstrate the receipt of the income, the government necessarily had to show the income’s source.”); *United States v. Smith*, 206 F.2d 905, 910 (3d Cir. 1953) (“The prosecution relied upon evidence of specific items of income which, after allowance for known deductions and exemptions, became net taxable income. Here, the Government did not rely upon bald cash items and let it go at that. Whether the item was cash or a check, it was traced to its source and shown to be income within the legal sense of that term.”).

In the context of the case against Cammarata, the fact that Cammarata received substantial sums from Alpha Plus was, of course, relevant to proving that Cammarata received income that he failed to

report. It did not, however, establish that those funds constituted “taxable income.” Under certain circumstances, the receipt of funds from securities class action settlements can be non-taxable. SAppx1111-12, 1436.

In contrast, gains from unlawful activity are taxable. *United States v. James*, 366 U.S. 213 (1961); *Abodeely*, 801 F.2d at 1025. Thus, settlement proceeds that Cammarata acquired through fraud would be categorically classified as income and would be entirely taxable. SAppx1098, 1436, 1562-63. Therefore, by showing that the source of the funds that Cammarata received from Alpha Plus was from his operation of an unlawful fraud scheme, the government could prove that those funds represented income to Cammarata that was subject to federal taxation.

For this very reason, numerous cases have allowed the government to prove the unlawful source of funds in tax evasion cases. For example, in *Abodeely*, the defendant was convicted of criminal tax evasion arising out of his failure to pay taxes on, among other things, the proceeds of prostitution. *Abodeely*, 801 F.2d at 1021-22. Like Cammarata here, the defendant in *Abodeely* claimed that evidence of the illegal source of his income was irrelevant and prejudicial. *Id.* at 1022. The Eighth Circuit rejected that argument, pointing out that “it is incumbent on the government to prove that the excess income is taxable,” and, because

“[g]ains from unlawful activity are taxable,” the court held that evidence of the illegal source was relevant “because it has the tendency to make it more probable that Abodeely had unreported income from a taxable source.” *Id.* at 1025. Indeed, the evidence that the defendant had promoted prostitution was “highly probative of unreported taxable income.” *Id.* at 1026.

Precisely the same conclusion applies even where the illegality was far more prejudicial than it was here. In *United States v. Tafoya*, 757 F.2d 1522, 1526-27 (5th Cir. 1985), the defendant in a tax case challenged as irrelevant and prejudicial the admission of evidence that he had earned his unreported income by carrying out assassinations. The Fifth Circuit rejected the argument, pointing out that “the government had to show the jury that Tafoya did *something* to earn the income it alleged he failed to report.” *Id.* at 1527 (emphasis in original). More generally, the court explained that “[t]his is a frequent problem in tax prosecutions, and prosecutors consistently have been permitted to prove the source of unreported income, a rule that here permitted evidence to establish the job for which Tafoya was hired and paid.” *Id.* See also *United States v. Hogan*, 886 F.2d 1497, 1506 (7th Cir. 1989) (evidence of bribe-taking admissible in a tax trial to show that the defendant received actual income that he did not report); *Carrillo*, 561 F.2d at 1127 (“unsavory business dealings” in

violation of state law were admissible to show source of unreported income).

By showing that the funds that Cammarata failed to report were his share of the proceeds of his fraud scheme, the government established that his unreported funds were necessarily taxable. If, however, that evidence had been excluded, the government would not have been able to prove a tax deficiency because it could not have proven the taxable status of Cammarata's unreported income. Thus, the Alpha Plus fraud evidence was not only relevant, but crucial, to prove an element of the charges against the defendant.

Even apart from its admissibility as proof of the deficiency element of the pending charges, evidence of the illegal source of Cammarata's unreported income was admissible to prove the separate element of willfulness. As Cammarata acknowledges, in addition to deficiency, to prove tax evasion, the government had to prove that Cammarata acted willfully. *See* Br. 19-21. The illegal nature of the income that a defendant fails to report is powerful evidence of the willful nature of the defendant's failure to report it to the IRS.

In *United States v. Palmer*, 809 F.2d 1504, 1505 (11th Cir. 1987), for example, the defendant was convicted of willfully failing to file tax returns.

He argued on appeal that evidence of his drug trafficking was irrelevant and prejudicial. *Id.* The Eleventh Circuit rejected this contention as “without merit,” explaining that the defendant’s involvement with illegal drugs served to prove his intent to evade payment of taxes and conceal his income. Likewise, in *Tafoya*, the Fifth Circuit concluded that the nature of the defendant’s employment as an assassin “was probative of his motive to conceal the employment by failing to report illegal income.” *Tafoya*, 757 F.2d at 1527.

As this Court has recognized, “[i]t would be the unusual fraudster who disclosed her ill-gotten gains to the Internal Revenue Service.” *United States v. Laird*, 67 F.4th 140, 145 (3d Cir. 2023). The jury was entitled to reach the same conclusion and find that the ill-gotten nature of Cammarata’s gains helped to establish his willfulness. Thus, for this second and independent reason, the fraudulent source of Cammarata’s funds was not only relevant, but directly probative, of the elements of the tax evasion charges that Cammarata faced.

The fraud evidence was intrinsic as contemporaneous facilitating acts

Even aside from the fact that it established two elements of the charged crimes, the fraud case evidence independently qualified for admission under the second prong of *Green*, as it constituted acts

performed contemporaneously that facilitated the commission of the charged crimes. Cammarata's fraud scheme, which involved submitting false claims to securities class action claims administrators, began in about August 2014. SAppx632-33; PSR ¶ 26. By May 5, 2015, Cammarata had already begun reaping the proceeds of that fraud, and had deposited some of them into a bank account in the name of one of his entities. PSR ¶ 30. He then began transferring those funds into a brokerage account and using them for personal expenditures. PSR ¶¶ 30-31.

Despite this accumulation of wealth during 2015, Cammarata did not report to the IRS more than \$1.7 million of the fraud proceeds that he received from Alpha Plus that year. SAppx2059. Likewise, for years 2016, 2017, 2018, and 2019, Cammarata received millions of dollars of fraud proceeds from Alpha Plus and excluded it from his tax returns from those years. *Id.*

The time period of Cammarata's Alpha Plus fraud corresponds exactly with the time period of the tax evasion counts with which he was charged; thus the fraudulent acts are contemporaneous. Likewise, because it was income from the fraud scheme that Cammarata concealed from the IRS, that fraud directly facilitated the tax evasion. Thus, both elements of the second type of intrinsic evidence under *Green* are also met.

Because evidence of the fraudulent source of Cammarata's income qualifies as intrinsic under Third Circuit law, it was necessarily both relevant and admissible. Indeed, the tax evasion charges against Cammarata could not have been practically prosecuted in the absence of proof of their source. Thus, the fraud evidence was properly admitted.

B. Cammarata failed to establish that the Risk of Unfair Prejudice Substantially Outweighed the Probative Value of the Fraud Evidence.

“Intrinsic evidence that reveals a defendant's legal guilt can be highly prejudicial, but that alone does not make it unfairly so.” *Cammarata*, 129 F.4th at 213 (quoting *United States v. Long*, 92 F.4th 481, 488 (3d Cir. 2024)) (internal quotations omitted). What is proscribed is *unfair* prejudice, because it “speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground *different* from proof specific to the offense charged.” *Id.* (quoting *Old Chief v. United States*, 519 U.S. 172, 180 (1997)).

Cammarata complains that the district court failed to balance the probative value of the fraud evidence against its prejudice before admitting it. Br. 36. This, however, is largely a product of the specific objection raised by Cammarata. In advance of trial, Cammarata filed a motion *in limine* to exclude evidence of the Alpha Plus fraud. SAppx1798-1847. The

government opposed that motion, arguing that the fraud evidence was both intrinsic and necessary to proving the charged offenses. SAppx1848-70.

After argument, the district court reserved its decision until trial so that it could evaluate the evidence in context. Supp. Appx92-96, 1871-73.

A district court's deferral of an *in limine* ruling requires the party seeking exclusion to make a formal objection if and when the issue arises at trial. *United States v. Polishan*, 336 F.3d 234, 244 (3d Cir. 2003). Here, when the issue arose at trial, Cammarata objected to only a portion of the fraud evidence, that pertaining to post-2019 events, telling the court that he was "okay with everything—. . . everything else we have talked about." SAppx220-21. Likewise, when the defendant renewed his objection the following day, he again limited his objection to post-2019 conduct. SAppx323-26.³

Having told the district court that he was "okay" with all of the fraud case evidence other than that after 2019, and having expressly limited his objection to post-2019 conduct, Cammarata waived any objection that he

³ Cammarata does not identify any other place in the record where he made a specific objection to the admission of evidence about the Alpha Plus fraud. Indeed, Cammarata's brief does not provide even a single citation to the record where he claims to have preserved the issue. Given that failure, the government relies on the record citations discussed above.

may have had to the admission of evidence from 2019 and before.

Moreover, when he did object, Cammarata objected on the ground that such evidence was not relevant. *Id.* at 220-26, 323-26. Cammarata did not ground his objection in Rule 403 and identified only jury confusion as a possible source of prejudice. *See id.* at 224. As the court pointed out, jury confusion on this issue would redound to Cammarata's benefit. *Id.* Thus, the absence of further balancing of unfair prejudice and probative value for the post-2019 evidence does not represent a procedural misstep by the district court but rather a failure by Cammarata.⁴

Regardless of fault, the probative value of the Alpha Plus fraud evidence was not substantially outweighed by any unfair prejudice. As discussed above, proof that Cammarata's undeclared proceeds were the product of the Alpha Plus fraud was crucial to the government's proof of the elements of tax evasion. Without that evidence, the government would have been vulnerable to a motion for acquittal inasmuch as non-fraud receipts might have been non-taxable. Indeed, Cammarata argued precisely that in

⁴ Cammarata's pretrial motion *in limine* and his initial oral motion both raised what he claimed was prejudice. *See Supp. Appx92-95, 1810-11.* On both of those occasions, however, the district court deferred its ruling until the issue was presented in a concrete context. When the issue did arise in context, Cammarata objected only on grounds of relevance.

his opening. SAppx168 (“This was not taxable because they were settlements returns.”).

Even Cammarata, arguing *pro se*, acknowledged that the fraud evidence was essential to the government’s case: “That's why the government has to prove fraud, because they realize if this wasn't fraud, there's no tax evasion.” SAppx33. Here too, Cammarata implicitly acknowledges the evidence’s importance, arguing that the government could have made do with a stipulation. *See* Br. 35. Ignoring the fact that he never proposed a stipulation below, Cammarata now supposes that he would have agreed to stipulate to his receipt of class action settlement funds from Alpha Plus. *See* Br. 35. But such a stipulation would not have addressed the essential purpose of the fraud evidence: to show that those receipts constituted income in Cammarata’s hands. Indeed, short of a guilty plea, it is hard to imagine a stipulation that would have sufficed.

“[W]hen evidence is highly probative, even a large risk of unfair prejudice may be tolerable.” *Long*, 92 F.4th at 488 (quoting *United States v. Womack*, 55 F.4th 219, 234 (3d Cir. 2022)). Yet here, while the fraud evidence was highly probative, the possibility of *unfair* prejudice was truly remote. Cammarata claims, with not a single citation to the record, that the admission of the fraud evidence made the jury aware of the Philadelphia

fraud trial. Br. 34-35. Not so. While the jury became aware of the fraud *evidence*, it was never informed that Cammarata had been previously tried and convicted.

Cammarata also claims that the fraud evidence allowed the government “to assassinate Mr. Cammarata’s character and invite the jury to find him guilty on that basis.” Br. 35-36. Again Cammarata is wrong. “Not all prejudice is unfair prejudice, and Rule 403 bars only the latter.” *Long*, 92 F.4th at 488. “Evidence that reveals a defendant's legal guilt can be highly prejudicial, but that alone does not make it unfairly so.” *Id.* Here, Cammarata’s undeclared cash receipts were income precisely because they were the product of fraud, and so any prejudice was not unfair. In any event, while no one would claim that cheating class action settlements is commendable, it is not the kind of conduct that triggers uncontrollable emotional reactions. The jury was instructed not to allow “sympathy, prejudice, fear, or public opinion” to influence its deliberations. Supp. Appx1692. There is every reason to believe that it adhered to that admonition. *United States v. Hakim*, 344 F.3d 324, 326 (3d Cir. 2003).

A district court is “not required to scrub the trial clean of all evidence that may have an emotional impact.” *Long*, 92 F.4th at 488. Here, the fraud evidence was indispensable to the government’s case while carrying only a

minimal risk of unfair prejudice. The district court properly admitted that evidence, and its judgment should be affirmed.⁵

⁵ Cammarata suggests in passing that the district court erred by failing to require an offer of proof from the government. Br. 36. Cammarata identifies no place in the record where he requested such an offer, much less objected to its absence. This is unsurprising as an offer of proof would have been entirely nonsensical. Cammarata had transcripts of the fraud trial where all of the government's fraud-related evidence had been spelled out. Indeed, counsel outlined that testimony in the written motion *in limine* and used their knowledge of the prior testimony when orally renewing that motion. SAppx0323, 1807-08. The district court did not err, much less plainly err, by not obtaining an unnecessary offer of proof.

III. THERE WAS NO CONSTRUCTIVE AMENDMENT OF CAMMARATA'S INDICTMENT

Standard of Review

A claim that the government constructively amended the indictment is subject to plenary review. *United States v. Cammarata*, 129 F.4th 193, 205 (3d Cir. 2025). However, where a defendant fails to properly preserve constructive amendment claims in the district court, this Court applies plain error review. *Id.*

Discussion

Cammarata argues that the government's proofs at trial established that he committed a different offense from the one charged in the superseding indictment. *See* Br. 21-26. He suggests that he preserved this issue in his post-trial motions and in his motion to reconsider the denial of his post-trial motions. *See* Br. 7-8.⁶ Because, however, constructive amendment claims must be raised during the trial, his current argument is reviewed only for plain error. *United States v. Vosburgh*, 602 F.3d 512, 531 (3d Cir. 2010) (Constructive amendment claims raised for the first time in a

⁶ Cammarata did not, in fact, raise a constructive amendment claim in his counseled post trial motions. *See* DDE ##134, 137. Rather, the first time Cammarata surfaced a constructive amendment argument was in his untimely motion for reconsideration, filed five days after his notice of appeal. *See* DDE ##155, 154.

post-trial motion are reviewed for plain error.). Here, there was no error, much less plain error.

“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.” *United States v. Daraio*, 445 F.3d 253, 259-60 (3d Cir. 2006). Where, however, the evidence at trial establishes the same scheme as was set forth in the indictment, there can be no constructive amendment. *United States v. Ratliff-White*, 493 F.3d 812, 821 (7th Cir. 2007); *United States v. Dupre*, 462 F.3d 131, 140-41 (2d Cir. 2006). This is because, where the jury convicts for conduct that actually appears in the indictment, there cannot have been a constructive amendment as a matter of law. *See United States v. Fallon*, 61 F.4th 95, 113 (3d Cir. 2023).

Relying principally on this Court’s *Fallon* decision, Cammarata claims that, having been indicted for income tax evasion, the government constructively amended the indictment by introducing evidence and arguments focused on the falsity of his filed tax returns. *See Br. 28-33*. Specifically, Cammarata claims that the government’s repeated reference to

his filing of false tax returns, hiding money from the IRS, funneling funds through corporate entities, and misleading his own accountant, created substantial likelihood that the jury convicted him for a crime, filing a false tax returns, which is different from the tax evasions charged in the indictment. Br. 30-33. *Fallon*, however, entirely refutes Cammarata's argument.

In *Fallon*, the defendants were charged with mail fraud based on their representations to customers that their fees were "all inclusive" when they in fact charged additional hidden fees. *Fallon*, 61 F.4th at 113. The defendants alleged a constructive amendment because the government proved several hidden fee schemes at trial whereas, according to the defendants, the only hidden fee scheme mentioned in the indictment was the "adjustment program." *Id.* Turning to the language of the indictment, this Court pointed out that it charged that "[a]mong" the hidden fee schemes was the "adjustment program." *Id.* at 111-12. Rejecting the defendants' effort to look to the evidence presented to the grand jury, the Court held itself bound by the language of the indictment and, because the indictment's language provided for multiple schemes, "the Government's references to other hidden fee schemes did not expand the scope of the indictment." *Fallon*, 61 F.4th at 113.

Cammarata's indictment charged five counts of tax evasion. To prove each, the government had to establish, among other things, that Cammarata had committed an affirmative act of evasion or attempted evasion. *Sansone v. United States*, 380 U.S. 343, 351 (1965). The indictment identified four affirmative acts of evasion for each count, and provided that these four were "among others." SAppx2066-71. For all five counts, the specified affirmative acts were: (i) diverting income into accounts in corporate names; (ii) paying personal expenses from corporate accounts; (iii) providing Cammarata's accountant with false financial information that did not include all of his Alpha Plus income; and (iv) causing false and fraudulent Forms 1040 to be filed with the IRS. *Id.*

The four specified affirmative acts are the exact same acts that Cammarata now claims amended the indictment. However, under *Fallon*, the government was entitled to admit evidence of the four types of affirmative acts of evasion alleged in the indictment without in any way constructively amending the indictment. Indeed, under *Fallon*, the fact that the indictment alleged that the four types of evasive acts were "among others" meant that the government was free to establish other and additional acts of evasion.

Here, where the acts proven were the same ones alleged in the indictment, there was a complete identity between the charges in the indictment returned by the grand jury and those on which the petit jury convicted. Therefore, there can have been no constructive amendment as a matter of law, and Cammarata's constructive amendment claim should be rejected.

IV. THE DISTRICT COURT CORRECTLY REFUSED TO ORDER A NEW TRIAL AS THERE WERE NO DISCOVERY VIOLATIONS

Standard of Review

This Court reviews a district court's denial of a motion for a new trial for abuse of discretion. *United States v. Kelly*, 539 F.3d 172, 181 (3d Cir. 2008). But where a defendant moves for a new trial on grounds different from those urged on appeal, this court need not reach the merits as “a judge has no power to order a new trial on his own motion.” *United States v. Wright*, 363 F.3d 237, 248 (3d Cir. 2004) (Alito, J.).

Discussion

At his final pretrial conference, Cammarata personally assured the district court that he was ready to proceed to trial and that no discovery issues stood in the way of his receiving a full and fair trial. Despite his representation, upon his conviction, Cammarata insisted in his Rule 33 motion that he had been denied a fair trial due to the absence of discovery. The district court denied that motion in part because of Cammarata's earlier representations. SAppx2049-50.

Cammarata now argues that the district court abused its discretion in so doing. In addition to renewing his unsubstantiated discovery complaints, however, Cammarata raises a host of issues he never timely presented to the district court as a basis for a new trial. Those latter issues are waived.

And none of the issues he presses now calls into question the district court's sensible exercise of discretion here.

A. Cammarata Has Waived All Claims for a New Trial That He Did Not Timely Present in his Post-Trial Briefing.

“Rule 33 of the Federal Rules of Criminal Procedure authorizes a trial judge to grant a new trial ‘[o]n a defendant's motion.’” *Wright*, 363 F.3d at 248. As a consequence, “a judge has no power to order a new trial on his own motion” but, with “a few narrow exceptions” not applicable here, “can act only in response to a motion timely made by a defendant.” *Id.* & n.4. Even where a defendant moves for a new trial, “a trial judge may not grant a new trial on a ground not raised in the motion.” *Id.*; *see also United States v. Rafiekian*, 991 F.3d 529, 551 (4th Cir. 2021). And “a defendant may not add new arguments in support of a motion for new trial by including them in an amendment filed after the time under Rule 33 has expired.” *United States v. Custodio*, 141 F.3d 965, 966 (10th Cir. 1998).

Ignoring those requirements, Cammarata contends that the district court should have granted him a new trial in part because the government supposedly violated its *Brady* obligations by failing to provide him with: (1) relevant IRS Forms 1042, Br. 7, 22-23; (2) “confirmation letters,” *see* Br. 22-23; (3) “plan of action forms,” *see* Br. 24-25; and (4) the data underlying the fraud income summary chart, Gx-1001, *see* Br. 28. The district court,

however, had given Cammarata a firm deadline to raise whatever grounds he had for seeking a new trial under Rule 33 for any reason other than newly discovered evidence. DDE ##111, 124, 129. Yet Cammarata mentioned none of these categories of documents in his briefing prior to the denial of his Rule 33 motion. SAppx.1874-1910, 2007-2044. So this Court “need not reach the merits of the argument” that these supposed *Brady* violations entitle Cammarata to a new trial. *Wright*, 363 F.3d at 248.

Although Cammarata did mention the government’s supposed failure to produce Forms 1042 in his unsuccessful motion for reconsideration, DDE #155, that was too late under this Court’s precedent. *See United States v. Newman*, 456 F.2d 668, 670 (3d Cir.1972) (deeming it “clear that the defendant . . . could not have amended his motion for a new trial after” Rule 33’s time limit “had expired”). Moreover, Cammarata does not even try to argue that the district court abused its discretion in denying his motion for reconsideration, with good reason: The district court rejected that *Brady* claim when Cammarata raised it mid-trial, and the district court was right to do so.

To prove a *Brady* violation, a defendant must show the evidence at issue was: (i) “favorable to the accused, either because it is exculpatory, or because it is impeaching;” (ii) “suppressed by the State, either willfully or

inadvertently;” and (iii) “material such that prejudice resulted from its suppression.” *Dennis v. Sec’y, Pennsylvania Dep’t of Corr.*, 834 F.3d 263, 284 (3d Cir. 2016) (en banc). Cammarata’s Form 1042 *Brady* claim flunked all three requirements.

The IRS issues Forms 1042 to track a foreign person’s United States source income subject to withholding. SAppx1486-87. Cammarata’s own expert testified that, because he was a U.S. citizen, this form did not apply to Cammarata individually. *Id.* at 1549-50. That expert also admitted that, to the extent that Cammarata owned a foreign corporation to which a Form 1042 would apply, the returns for those foreign entities should have appeared on Cammarata’s U.S. tax returns. *Id.* at 1550-51. There was no evidence at trial that any foreign entities appeared on Cammarata’s tax returns, much less the foreign based shell companies Quartis and Nimello.

Notwithstanding their facial inapplicability to his returns, acting *pro se*, Cammarata raised the issue of Forms 1042 mid-trial. Despite acknowledging that they had been provided in the discovery that that the government had supplied to his counsel, Cammarata claimed that the government had violated its *Brady* obligations with regard to those forms.

SAppx1277-82, 1596-97.⁷ Indeed, Cammarata made his *Brady* motion with the allegedly suppressed forms in his hands in the courtroom. SAppx1277-82.

After Cammarata made his motion, the government undertook a new search and confirmed that the approximately 42 Forms 1042 that it had provided in discovery had been filed with the IRS. SAppx1478-83. The defense subsequently questioned its own expert about the use of Forms 1042, called one of Cammarata's co-conspirators to discuss them in general, and moved into evidence one specific form addressed to the foreign Quartis entity. See SAppx1546, 1576-79. According to Cammarata's own witness, only a handful of such forms were ever sent to Alpha Plus. *Id.* at 1578, 1581.

Ultimately, the district court ruled that the Forms 1042 had been provided by the government and that Cammarata had made full use of them at trial. SAppx1603-05. Thus, the court found that Cammarata had failed to establish either suppression by the government or prejudice to him. Moreover, all of the Forms 1042 issued to Alpha Plus clients amounted

⁷ Cammarata claimed that the Forms 1042 had been produced "in the EDPA discovery but not in this case." SAppx1279. As discussed below, however, the government established, and the district court found, that all of the fraud case discovery had been re-produced to Cammarata's counsel in the New Jersey tax prosecution. Thus, when Cammarata admitted that he found the forms among the fraud case discovery, he necessarily admitted that the government had not suppressed them.

to a total tax withholding of only about \$12,000. SAppx1524-25. Given that Cammarata had a tax deficiency of about \$6.6 million, those forms were in no way material. *Id.* That, too, shows there was no *Brady* violation.

B. The District Court properly denied a new trial as Cammarata's income and expense information was fully provided and Cammarata waived any *Brady* claim on that ground.

As for the Rule 33 arguments that Cammarata did timely press, they fail because he waived some of them and they lack merit in any event. For example, Cammarata argues that the district court abused its discretion in refusing to order a new trial on the ground that the government failed to provide required discovery about his income, business expenses, and investment losses. Br. 23-24, 28. The district court rejected this argument, both because the government had complied with its discovery obligations and because Cammarata waived the issue. SAppx2049-50. The district court was right on both grounds.

For most of the pretrial proceedings, Cammarata was represented by appointed counsel. DDE #7, 13, 40, 43-45. Less than a month before trial, however, Cammarata filed a motion to represent himself, which the court granted. DDE ##70, 79. In so doing, the court not only required his two appointed counsel to remain as standby counsel, but also permitted Cammarata to proceed with hybrid representation at trial, with his standby

counsel serving as co-counsel. DDE ##79, 82 (at p.3); 101, 102. At Cammarata's direction these two attorneys actively participated in the trial, conducting various direct and cross examinations, raising objections, and even making closing argument. SAppx323, 1347, 1456, 1573.

The government produced discovery to Cammarata during the time that he was represented by counsel. This included both tax-case specific discovery and a complete set of the discovery that had been produced in Cammarata's earlier Philadelphia fraud case. SAppx1772. Cammarata's counsel acknowledged the receipt of this material. SAppx1787-89. Indeed, defense counsel's receipt of, and obligation to assimilate, the substantial volume of discovery from the fraud case was one of the primary justifications for the appointment of a second CJA counsel to represent Cammarata. SAppx1787-89, 1796-97.

At the final pretrial conference, shortly after Cammarata had been granted leave to represent himself, the government asked the district court to colloquy Cammarata about his willingness and preparedness to proceed to trial. SAppx44. The government pointed out that, while Cammarata maintained a desire to immediately begin his trial, he also insisted that he had not had an adequate opportunity to review the discovery that the government had produced to his counsel. *Id.* The government wanted to

avoid a later claim by Cammarata that his trial had been unfair because of an alleged lack of access to discovery. *Id.*

In response, Cammarata complained to the court that he did not have access to his own files. *Id.* at 45-46. After discussion with the court, however, he represented that: “I’m not using it as an excuse. I am prepared to go forward.” *Id.*

The government then raised Cammarata’s claimed problems accessing the discovery that the government had long before provided to his counsel, and requested that any discovery access issues be addressed before a jury was empaneled: “If Mr. Cammarata’s circumstances mean that he feels that he has not had adequate time to review it, we ought to address that now.” *Id.* at 47. Cammarata reiterated that he was “prepared to go forward.” *Id.*

When the court asked him what he wanted the court to do, Cammarata said: “Nothing.” *Id.* at 48. When the court pointed out that his two attorneys had received and reviewed the government’s voluminous discovery, Cammarata asserted he had not had access to it, but insisted that it did not matter: “I have not looked at the discovery. Again, at this point I believe my defense is somewhat irrelevant to the discovery at this point.”

Id. Both Cammarata and his two standby counsel then re-confirmed to the court that they were prepared to proceed. *Id.* at 48-49.

Based on those representations, the district court was “satisfied” Cammarata was “prepared to go to trial,” and the government expressed its satisfaction that “the issues have been laid out before him and he is aware of them and he has made the choice that he’s made.” *Id.* at 49. The court therefore accepted Cammarata’s representations and the trial commenced. *Id.*

A defendant’s decision to intentionally relinquish or abandon a known right results in a “waiver” of that right. *United States v. James*, 955 F.3d 336, 344 (3d Cir. 2020). “When a right or rule is waived, ‘an appeal based on a non-adherence to the legal principle is precluded.’” *Id.* (quoting *Virgin Islands v. Rosa*, 399 F.3d 283, 290 (3d Cir. 2005)). Not even plain error review is available. *See, e.g., United States v. Henderson*, 64 F.4th 111, 116 (3d Cir. 2023) (“Waived arguments may not be reviewed on appeal while forfeited arguments are reviewable for plain error.”). Thus, a “party who identifies an issue, and then explicitly withdraws it, has waived the issue.” *United States v. Rodriguez*, 311 F.3d 435, 437 (1st Cir. 2002). Particularly where a party has withheld an issue for tactical reasons, a

waiver will be found and enforced. *See United States v. Mihm*, 13 F.3d 1200, 1204 (8th Cir. 1994).

Here, Cammarata recognized that the government had produced extensive discovery to his lawyers, maintained that he personally had not had complete access to those materials, but represented that it did not matter to him and that he wanted to go to trial in any event. Likewise, he contended that there were relevant materials outside the government's possession, such as his own personal emails, that he had not been able to access. Again, despite this claim, Cammarata insisted on proceeding to trial, assuring the court that he was ready.

In making this choice for himself, Cammarata waived any discovery claim arising out of his access to either the government's discovery or the unspecified personal materials that he claimed existed. Indeed, having made that decision for explicitly tactical reasons, it is not subject to even plain error review. *United States v. Yu-Leung*, 51 F.3d 1116, 1122 (2d Cir. 1995) (a defendant's strategic choice made at trial precludes even plain error review).

The district court pointed to Cammarata's pretrial representations in denying his motion for a new trial. Noting his claim that the so-called missing materials had, according to Cammarata himself, been produced by

the government in the earlier fraud prosecution, the court recalled Cammarata's desire to proceed to trial and failure to object to the absence of expenses, documents, or other records. SAppx2049-50. The court concluded that this "was a strategic decision for which the Defendant bears full responsibility; this issue has little to do with discovery issues." *Id.* The district court was correct: Cammarata waived the discovery claim and was therefore not entitled to a new trial on this ground.

Even apart from waiver, the court rejected the new trial motion, finding that the government had "complied with its discovery obligations" and that it had no reason to "believe that Defendant's accusations have merit." SAppx2049. As the court noted, Cammarata had insisted that the "missing" materials had been located among the discovery that the government produced in the fraud case. Supp. Appx1602-03, 2049. The court also noted that it had ordered the government to produce those exact materials to Cammarata's counsel, and that those counsel had submitted bills to the court in which "they've spent a lot of time reviewing documents and documents." *Id.* at 1603. The government even supplied the court with the correspondence to Cammarata's counsel enclosing both the fraud case discovery and the additional tax case discovery. SAppx1948-51. In fact,

Cammarata's counsel, long before Cammarata began representing himself, acknowledged receiving the fraud case discovery. SAppx1788-89.

Given its familiarity with the tax case from having overseen it since its inception, the district court concluded that the absence at trial of records to support additional deductions favorable to Cammarata was due to Cammarata's *pro se* strategic maneuverings and not to any discovery failure by the government. SAppx2050.

This was, moreover, far from the first time that the district court had rejected Cammarata's unsupported claims of discovery violations. On the ninth day of the trial, the court fully and finally rejected Cammarata's repeated claims of discovery violations with the following:

THE COURT: I don't find any violation of any *Brady* type -- on any *Brady* type -- *Brady* standards. So your motion at this point is denied.

THE DEFENDANT: Is it without prejudice?

THE COURT: Without prejudice? No, with prejudice, I think. I've made this decision, I bet, ten times during the course of this trial. So it's with prejudice.

SAppx1605-06. *See also id.* at 1607 (“So to me, the government has fulfilled its burden of providing you with discovery.”).

The district court correctly rejected Cammarata's *Brady* claim as evidence relating to Cammarata's alleged deductions failed all three

elements. First, as described above, Cammarata failed to show that the government suppressed the expense and income evidence because, in fact, the government provided it to his counsel. *See* SApp1948-63. Given that Cammarata was, at that time of these productions, represented by counsel, delivery to his attorney sufficed. *See Vermont v. Brillon*, 556 U.S. 81, 90-91 (2009) (the attorney is the defendant's agent when acting, or failing to act, in furtherance of the litigation).

Second, Cammarata failed to show how any of the records he claims the government did not produce were favorable. Cammarata's expenses by themselves are irrelevant. They could be pertinent to his tax evasion trial only if they were actually expended by him and were in fact deductible under the tax code. *See Welch v. Helvering*, 290 U.S. 111, 113 (1933) (an expense must be both ordinary and necessary to be deductible). But Cammarata does not cite anything in the record establishing that he incurred expenses that were legitimately deductible. Instead he makes only unsupported claims that he had deductions that might have offset his taxable income. *See* Br. 20, n.5; 23-24.

One example illustrates the danger of relying on his opening brief's extra-record assertions of fact. According to Cammarata, he incurred deductible expenses "in connection with operating his Bahamian Island

Resort, Sandy Cay.” Br. 23. Not only does Cammarata fail to cite any part of the record where he established the existence of Sandy Cay-related expenses, but he also fails to show that Sandy Cay was in fact a business the expenses of which were deductible. *See* Br. 23. To the contrary, in his last appeal to this Court, Cammarata complained that the government’s admission of evidence concerning Sandy Cay had been prejudicial because it unfairly portrayed him as the “hugely wealthy” owner of a “private island.” *Cammarata*, 129 F.4th at 208. Private expenses to maintain a private residence are not legitimate business deductions.

Even beyond the complete absence of record support for Cammarata’s assertions that evidence of deductible expenses existed, the trial evidence demonstrated that Cammarata willingly directed his accountant to take false, fabricated, and overstated deductions. *See* PSR ¶ 21; Supp. Appx593-98, 604-15. It is inconceivable that Cammarata simultaneously chose to withhold from his returns expenses that would have been properly deductible while filing returns awash with illegitimate ones. *See, e.g., Elwert v. United States*, 231 F.2d 928, 934 (9th Cir. 1956) (jury is free to disbelieve proffered expenses based on the totality of the evidence). Given the absence of any proof to support his claims,

Cammarata failed to establish that any allegedly withheld records were favorable.

Third, and finally, Cammarata fails to show how the admission of any of these records would have created a reasonable probability of a different result. He failed to create a record, either at trial or elsewhere, that there existed legitimate deductions that would have come anywhere close to offsetting his unreported income. For each of the charged years, Cammarata failed to report between \$1.7 million and \$4.8 million. Having failed to prove the existence of any deductions, Cammarata could not show that his criminal tax liability would have been materially reduced. And, as noted above, the jury would have been free to disbelieve any expenses that he did manage to prove. Accordingly, Cammarata also failed to satisfy the third prong of the *Brady* analysis.

C. The District Court properly denied a new trial as Cammarata was provided with expert disclosures and, in any event, waived any discovery claim on that ground.

Cammarata also claims that the government failed to provide his counsel with the written summary of expert testimony required by Federal Rule of Criminal Procedure 16(a)(1)(G). Br. 26-28. Although he made the same complaint in his timely Rule 33 motion submissions, he offers no citations to the record where he claims to have preserved the issue before or

at trial. This absence is telling, as Cammarata in fact waived any objection. In any event, the record is clear that the government fully complied with its expert discovery obligations.

On July 10, 2023, when Cammarata was represented by counsel, Cammarata's attorneys sent the government a discovery request for, among other things, expert discovery and reports of the IRS Revenue Agent. *See* SAppx1970, 1974. That same day, the government wrote back providing its expert disclosures. *See id.* at 1975.

At the pretrial conference, neither Cammarata nor his standby counsel raised any objection to the expert disclosure nor suggested that it had not been received. Instead, both Cammarata and his counsel assured the district court that they were satisfied with the state of discovery and were ready to proceed. SAppx48-49. Likewise, when the government tendered its revenue agent as "an expert in tax computation," Cammarata advised the court that he had "no objection." SAppx1434. Having expressly raised the issue of expert discovery pretrial, and having failed to raise any issue about the government's disclosures either when asked about discovery issues pretrial or when the government's expert was tendered, Cammarata waived any claim that the government did not fully comply with Rule 16(a)(1)(G).

In any event, the correspondence submitted to the district court establishes that the government did, in fact, fully comply. It identified the government's revenue agent as its trial expert witness, provided the revenue agent's report that he had adopted, supplied the witness's CV, and identified the single case in which he had testified in the last four years. SAppx1975. The district court certainly did not abuse its discretion in refusing to order a new trial on that ground

CONCLUSION

For the reasons stated above, the government respectfully requests that the judgment of the district court be affirmed.

Respectfully submitted,

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CERTIFICATION

1. The undersigned certifies that this brief contains 12,533 words, exclusive of the table of contents, table of authorities, signature block, and certifications, and therefore complies with the limitation on length of a brief stated in Federal Rule of Appellate Procedure 32(a)(7)(B).

2. I hereby certify that the electronic version of this brief filed with the Court was automatically scanned by OfficeScan Real-Time Scan Monitor, version 10.5, by Trend Micro, and found to contain no known viruses. I further certify that the text in the electronic copy of the brief is identical to the text in the paper copies of the brief filed with the Court.

/s Paul G. Shapiro
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CERTIFICATE OF SERVICE

I hereby certify that this brief has been served on the Filing Users identified below through the Electronic Case Filing (ECF) system:

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DATED: June 5, 2005