

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1233

UNITED STATES OF AMERICA

v.

EMERSON PAVILUS,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2:21-cr-00428-001)
District Judge: Honorable Stephanos Bibas *

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 13, 2026

Before: CHAGARES, Chief Judge, SCIRICA ** and McKEE, Circuit Judges.

(Opinion Filed: September 3, 2026)

OPINION***

* The Honorable Stephanos Bibas, Circuit Judge, United States Court of Appeals for the Third Circuit, sitting by designation pursuant to 28 U.S.C. § 291(b).

** The Honorable Anthony J. Scirica was unavailable to participate in the decision in this case after submission to the merits panel. This opinion is filed by a quorum of the panel pursuant to 28 U.S.C. § 46(d) and 3d Cir. I.O.P. 12.1(b).

*** This disposition is not an opinion of the full Court and, pursuant to 3d Cir. I.O.P. 5.7, does not constitute binding precedent.

PER CURIAM

Defendant Emerson Pavilus appeals his judgment of conviction for conspiracy to possess with intent to distribute marijuana, receipt of bribes, and conspiracy to defraud the United States, arguing that the District Court denied him a fair trial by conditionally admitting out-of-court statements made by an alleged co-conspirator pursuant to Federal Rule of Evidence 801(d)(2)(E). We discern no error in the District Court's admission of the statements and will affirm.

I.¹

Emerson Pavilus was a United States Postal Service carrier on a route located in Flanders, New Jersey. He began working in 2015 with a drug trafficker named Florence Petit (aka "Flo") to coordinate shipments of marijuana through the mail. Under their scheme, Pavilus took note of residences on his route and passed those addresses on to Flo. Flo then had his cousin ship marijuana to those residences and gave Pavilus the tracking information. Pavilus delivered the packages for \$500 per box.

Flo recruited another drug trafficker, Prosper Bazile, to participate in the arrangement in late 2016. According to Bazile, Flo told him that he had a "mailman" who would intercept the packages of marijuana and deliver them for a fee. Appendix ("App.") 366. Pavilus eventually delivered one such package to Bazile at Bazile's house in exchange for \$500.

Bazile fell out with Flo in 2017 and began independently running a fraudulent

¹ We write primarily for the parties and so set forth only those facts essential to our decision.

credit card and cocaine trafficking operation. After having previously worked with Pavilus, Bazile recruited him to again supply shipment addresses for the fraudulent credit cards and cocaine, divert the incoming packages, and deliver them to Bazile in exchange for payment.

Federal agents arrested Bazile on February 12, 2020, and he began cooperating with the Government. Pavilus was arrested on June 24, 2020. Pavilus later admitted in a post-arrest interview that he knew Flo, had given Flo and Bazile addresses from his route, had received “tip[s]” for intercepting packages for them, and knew Flo dealt in marijuana. App. 866.

A grand jury in the District of New Jersey consequently indicted Pavilus on charges of conspiracy to possess with intent to distribute cocaine and marijuana, receiving bribes, and conspiracy to defraud the United States. Prior to trial, the Government indicated that it would call Bazile as a witness and filed a motion in limine to admit his testimony regarding his conversations with Flo under Federal Rule of Evidence 801(d)(2)(E). The District Court conditionally admitted Flo’s statements over Pavilus’s objection, noting that it would instruct the jury that it could only consider the statements if it found that a conspiracy existed between Flo and Pavilus, and the statements were made in furtherance of the same.

At trial, Pavilus renewed his objection. The District Court reiterated its conditional admission and instructed the jury: “If you find that in fact, yes, I think they were conspiring together, then you can consider all of these statements for their truth. And if not, then the basis for allowing these statements in for truth to hold them against

Mr. Pavilus falls apart.” App. 365. The jury found Pavilus guilty of all three counts.² Pavilus then moved for a judgment of acquittal or alternatively, for new trial without Flo’s statements, arguing that the Government had not established that he was in a conspiracy with Flo or that the statements were made in furtherance of that conspiracy. The District Court denied the motion, and sentenced Pavilus to 18 months of incarceration, followed by three years of supervised release. Pavilus timely appealed.

II.³

Pavilus advances a single argument on appeal: that the District Court denied him a fair trial by erroneously admitting Flo’s statements under Federal Rule of Evidence 801(d)(2)(E).⁴ Rule 801(d)(2)(E) provides that an out-of-court statement is not hearsay if “[t]he statement is offered against an opposing party and . . . was made by the party’s coconspirator during and in furtherance of the conspiracy.” For a statement to be

² As to Count One, the jury found Pavilus guilty of conspiracy to distribute marijuana, but not cocaine.

³ The District Court had jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291. Where, as here, the District Court admitted alleged co-conspirator statements pursuant to Federal Rule of Evidence 801(d)(2)(E) without making an explicit finding that a conspiracy existed, we exercise plenary review. United States v. Cruz, 910 F.2d 1072, 1081 & n.11 (3d Cir. 1990).

⁴ Pavilus also suggests that the District Court erred by conditionally admitting Flo’s statements without making an explicit determination regarding the existence of a conspiracy. But while Pavilus is correct that the District Court did not make an explicit finding, we have previously explained that “the failure to make the explicit finding does not render the district court ruling reversible.” Cruz, 901 F.2d at 1081 n.11 (3d Cir. 1990). Rather, “even in the absence of explicit findings by the trial court, the necessary threshold determination [that there was sufficient evidence of a conspiracy] is implicit in the court’s decision to send the case to the jury.” United States v. Ammar, 714 F.2d 238, 247 (3d Cir. 1983).

admissible under the rule, the District Court must therefore find by a preponderance of the evidence that: “(1) a conspiracy existed; (2) the declarant and the party against whom the statement is offered were members of the conspiracy; (3) the statement was made in the course of the conspiracy; and (4) the statement was made in furtherance of the conspiracy.” United States v. Ellis, 156 F.3d 493, 496 (3d Cir. 1998).

Pavilus attacks the first, second, and fourth prongs, contending that the “[t]he testimony and evidence failed to establish the existence of the conspiratorial relationship and that the statement was in furtherance of any conspiracy.” Pavilus Br. 8. As an initial matter, while Pavilus acknowledges that there may have been a conspiracy involving Bazile and Flo, he claims that the record contains no communications linking the three of them or “evidencing their agreement to conspire to distribute controlled substances.” Pavilus Br. 12. And since there is thus no independent evidence — other than Bazile’s testimony — that Pavilus was involved in the Flo-Bazile conspiracy, Pavilus argues that he is entitled to a new trial without Flo’s statements.

But review of the record reveals ample independent evidence establishing both the existence of a conspiracy and Flo, Bazile, and Pavilus’s participation in the same. Even apart from Bazile’s testimony that he knew Flo trafficked marijuana through the mail, had directly received a box containing marijuana from Pavilus, and knew Pavilus had delivered similar parcels to Flo on multiple occasions, Pavilus himself admitted that he knew Flo dealt marijuana, had provided Flo with addresses on his route, was in communication with Flo about the packages, had intercepted packages for Flo up to five times and for Bazile once, had received payments of \$500 per package for doing so, and

knew that those packages likely contained marijuana. This evidence is more than sufficient to establish by a preponderance of the evidence that a conspiracy to distribute marijuana through the mail existed, and that Flo, Bazile, and Pavilus were all participants therein. The District Court's conditional admission of Flo's statements was consequently not error based on these factors.

Pavilus also contends that even if the evidence was sufficient to establish that he, Flo, and Bazile participated in a conspiracy to distribute marijuana through the mail, the District Court nonetheless erred by conditionally admitting Flo's statements because they were not made in furtherance of the conspiracy. Pavilus notes that despite Bazile's testimony that Flo told him that he paid the mailman \$500 per package, there is no indication that Flo ever said the name of the mailman, that the money was a bribe or payment for Pavilus's assistance, or that there was an agreement or negotiation over that payment. Given these deficiencies, Pavilus suggests that the communications between Flo and Bazile are best characterized as "anecdotal" or conversation[al]" and thus, do not qualify as being "in furtherance" of the conspiracy under Rule 801(d)(2)(E). Pavilus Br. 11.

But "[t]he threshold for establishing that a statement was made in furtherance of a conspiracy is not high: the in furtherance requirement is usually given a broad interpretation." United States v. Duka, 671 F.3d 329, 348 (3d Cir. 2011) (citation modified). So while we have previously stated that "a casual conversation between co-conspirators does not meet the 'in furtherance' requirement, 'statements between co-conspirators which provide reassurance, serve to maintain trust and cohesiveness among

them, or inform each other of the current status of the conspiracy further the ends of the conspiracy and are admissible.’’ United States v. Bobb, 471 F.3d 491, 498 (3d Cir. 2006) (quoting Ammar, 714 F.3d at 252). And here, while Flo’s statements might have lacked certain details as to the payment and mailman’s identity, they nevertheless updated Bazile as to current status of the scheme and its participants, reassured him that the scheme was unlikely to be detected, and helped maintain trust between Flo and Bazile. Because Flo’s statements thus kept Bazile “abreast of developments to induce [his] continued participation and allay any fear [he] might have had,” they were made in furtherance of the conspiratorial scheme and are admissible under Rule 801(d)(2)(E) for this additional reason. United States v. Gibbs, 739 F.2d 838, 846 (3d Cir. 1984).

III.

For the following reasons, we will affirm the judgment of the District Court.