

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1435

UNITED STATES OF AMERICA

v.

KENNETH STRICKLAND, a/k/a Knowledge,

Appellant

Appeal from the United States District Court
for the District of New Jersey
(District Court No. 2:21-cr-00311-001)
District Judge: Honorable Brian R. Martinotti

Argued on March 26, 2026

Before: HARDIMAN, SCIRICA*, and AMBRO, *Circuit
Judges*

* The Honorable Anthony J. Scirica was unavailable to participate in the decision in this case after submission to the merits panel. The opinion in this matter was filed by a

(Opinion filed August 18, 2026)

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OPINION OF THE COURT

AMBRO, *Circuit Judge*

After a jury trial, Kenneth Strickland appeals his convictions for drug conspiracy and distribution. He raises four issues, including whether the District Court erred by declining to instruct the jury that the Government must prove chain of custody beyond a reasonable doubt. We affirm Strickland's convictions, though in doing so we part from the

quorum of the panel pursuant to 28 U.S.C. § 46(d) and 3d Cir. I.O.P. 12.1(b).

current Third Circuit Model Criminal Jury Instruction on chain of custody.

I. BACKGROUND

In January 2024, a grand jury indicted Kenneth Strickland on six counts—one count of conspiracy to distribute and possess intending to distribute fentanyl and heroin, and five counts of fentanyl distribution and possession with intent to distribute, all in violation of 21 U.S.C. § 841(a)(1). The five counts of fentanyl distribution were based on five undercover transactions between November 2019 and May 2020. Trial took place in July 2024.

During the trial, the jury heard from Detective John Cooney, who made the undercover purchases. He testified that he bought drugs from a man named “Knowledge,” whom he identified as Strickland. The Government’s evidence also included surveillance video and testimony from officers who conducted surveillance, a co-conspirator who testified he sold drugs to “Knowledge” on consignment (delaying payment until Knowledge sold the drugs to customers of his own), testimony and reports from forensic chemists, cell-site location data, wiretap recordings and text messages, and recorded phone calls and emails between an incarcerated co-conspirator and the suspect. The Government introduced several bags of drugs as physical evidence.

Strickland advanced a defense theory of mistaken identity, questioning Detective Cooney’s identification of him and presenting an expert on the unreliability of eyewitness identifications. He also cross-examined witnesses on chain of custody and objected to the introduction of certain drug evidence on chain-of-custody grounds. Strickland returned to these themes in summation.

At the close of trial, Strickland requested a jury instruction on chain of custody based on the Third Circuit Model Criminal Jury Instructions (“Model Instructions”). In its entirety, the Model Instruction on chain of custody reads as follows:

The defense has raised the issue of defects in the chain of custody of *(describe evidence in question; e.g., the firearm, the drugs)*. You may consider any defects in determining the authenticity of this evidence and what weight to give it. The government must prove beyond a reasonable doubt that the *(describe evidence in question) (is)(are)* the same as the *(describe evidence) (alleged in the indictment)(introduced during the trial)*.

3d Cir. Model Crim. Jury Instruction 4.12. The Government requested that the scope of the instruction be limited to certain exhibits. Defense counsel expressed concern that such a limitation might imply the beyond-a-reasonable-doubt burden applied only to those exhibits and not others. The Government suggested omitting the last sentence altogether; defense counsel opposed that suggestion.

Ultimately, the District Court agreed with defense counsel regarding scope but removed the last sentence of the instruction as the Government had requested. Defense counsel proposed a modified version of that sentence, but the Court rejected it, reasoning that the instructions were already “replete with [the] government’s burden” and that the deletion was “an easier way” to resolve the dispute. App. 2952. Defense counsel unsuccessfully protested that the instructions conveyed the Government’s burden “as to the elements but not to the chain of custody.” *Id.*

The jury returned verdicts of guilty on all counts, and the District Court sentenced Strickland to 132 months of incarceration. He now appeals his convictions.

II. ANALYSIS

On appeal, Strickland contends the District Court should have (1) instructed the jury according to the final sentence of Model Instruction 4.12, (2) permitted additional testimony from the expert witness on eyewitness identification, (3) admitted the recordings of prison calls on an individual basis rather than in bulk, and, (4) as to the conspiracy offense, granted his motion for a judgment of acquittal under Federal Rule of Criminal Procedure 29.

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291. For the following reasons, we affirm the judgment of conviction.

II.A. Burden of Proof for Chain of Custody

First, Strickland contends the District Court should have instructed the jury according to the final sentence of Model Instruction 4.12, which, as noted, requires the Government to “prove beyond a reasonable doubt” that the drugs displayed at trial were in fact the drugs from the undercover purchases.

We note at the outset that the Model Instructions do not bind courts. *United States v. Maury*, 695 F.3d 227, 259 (3d Cir. 2012). The parties do not dispute that the instruction actually given by the District Court was legally accurate; we review for abuse of discretion its refusal to give additional instructions. *United States v. Jimenez*, 513 F.3d 62, 74 (3d Cir. 2008). We reverse “only if the omitted instruction is correct, is not substantially covered by other instructions, and is so important that its omission prejudiced the defendant.” *United*

States v. Piekarsky, 687 F.3d 134, 142 (3d Cir. 2012) (quoting *United States v. Urban*, 404 F.3d 754, 779 (3d Cir. 2005)). As a matter of first impression, we hold that the omitted instruction is incorrect.^{1, 2}

¹ Strickland contends the Government forfeited any challenge to the legal accuracy of the Model Instructions. He points out that it argued only that the instruction was duplicative and confusing during the charge conference and that it did not object during closing statements when defense counsel said the chain of custody must be established beyond a reasonable doubt. But the Government is not the appellant in this case. “We may affirm an order of the district court on any ground supported by the record.” *United States v. Jenkins*, 333 F.3d 151, 153 (3d Cir. 2003) (citing *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 237 n.6 (3d Cir. 1995)). What’s more, we have “discretion to consider pure questions of law [that] are closely related to arguments that the parties did raise and for which no additional fact-finding is necessary.” *Ingram v. Experian Info. Sols., Inc.*, 83 F.4th 231, 240 n.5 (3d Cir. 2023) (citation modified). Further, our review for abuse of discretion—which does not apply until the appellate stage—asks specifically whether “the omitted instruction is correct.” *Piekarsky*, 687 F.3d at 142 (quoting *Urban*, 404 F.3d at 779). Strickland’s position would preclude the Government from addressing a key component of the appellate standard because it won on another ground at the District Court. We reject that incongruity.

² Strickland contends we have previously considered this issue in *United States v. Clark*, 425 F.2d 827 (3d Cir. 1970), where we approved the following jury charge:

Model Instruction 4.12 does not explain why it requires the Government to prove chain of custody beyond a reasonable doubt. Its commentary states only that because “[a] defect in the chain of custody goes to the weight of the evidence, not its admissibility[,] questions about the chain of custody might cause the jury to acquit even though the evidence was properly admitted.” 3d Cir. Model Crim. Jury Instruction 4.12 cmt (citations omitted). It mentions “burden of proof” to say only that “the defendant has no burden of proof” when the Government challenges the authenticity of defense evidence, “but the government may persuade the jury that the defendant’s evidence has no probative value.” *Id.* The instruction and its commentary have remained substantively unchanged since

[I]f you are not convinced beyond a reasonable doubt that those bags on which the defendant’s fingerprints were found are the bags that were [recovered by police], then this defendant should be acquitted.

Id. at 833. For two reasons, *Clark* does not govern here. First, that case arose in the context of an evidentiary challenge to the admission of the fingerprint identification; neither the jury instruction nor the burden of proof was at issue. Second, our footnote that “[t]he charge made clear that the jury had the function of determining the facts” was not, as Strickland argues, a holding that the jury must find the chain of custody beyond a reasonable doubt. *See id.* at 833 & n.9. Instead, we simply explained (1) the charge left the factual determination to the jury, and (2) such a delegation was proper because the evidence was properly admitted, so the defendant’s objections went to “the weight of the evidence rather than to its admissibility.” *Id.* at 833.

their adoption in 2006. See 3d Cir. Model Crim. Jury Instruction 4.12 (2006). But no model criminal jury instruction in any other circuit contains similar language. And that is for good reason.

We distinguish the “elements” of a crime from facts “extraneous to the crime’s legal requirements.” *Mathis v. United States*, 579 U.S. 500, 504 (2016). The Government must prove beyond a reasonable doubt only the offense elements. See *id.* “The measure of reasonable doubt need not be applied to specific detailed facts, but only to the ultimate issue.” *Government of the Virgin Islands v. Greene*, 708 F.2d 113, 115 (3d Cir. 1983); see also *United States v. DiGilio*, 538 F.2d 972, 988 (3d Cir. 1976) (holding competency need not be proven beyond a reasonable doubt because it “is not an element of the crimes [indicted]” and “the government is not, on every subsidiary issue arising during the course of a criminal proceeding, required to satisfy the beyond-a-reasonable-doubt standard”).

Chain of custody is not an element of Strickland’s offenses. Accordingly, there is no requirement that the Government prove it beyond a reasonable doubt.

That is not to say that chain of custody is unimportant. Here, Strickland’s defense at trial included criticism of the way law enforcement handled the fruits of the undercover purchases. He argued the Government could not prove that the drugs presented at trial and authenticated as fentanyl were the drugs purchased from him. If the jury credited that argument, it might have created reasonable doubt as to whether the substance Strickland distributed was, in fact, fentanyl.

But the chain of custody is not independently significant. It derives its significance from its effect on the Government’s ability to prove the elements of the offense. In other words, the possibility that the chain of custody was

compromised—and thus that the items purchased in the undercover sales were swapped or contaminated—matters only because it weakens the evidence that what Strickland distributed was fentanyl, which is an element of the offenses charged in this case.

In a different case, chain of custody might not play such a central role. For example, we have upheld convictions on firearms offenses even when the firearm is never recovered by police. *See, e.g., United States v. Lake*, 150 F.3d 269, 270–71 (3d Cir. 1998). Such cases illustrate that chain of custody is not the sole way to prove beyond a reasonable doubt the identity of an object or the defendant’s possession of it.

Strickland’s arguments to the contrary are unavailing. First, he observes that district courts have delivered this instruction in its entirety and that the contested language remained unchanged through revisions of the instruction. *Compare* 3d Cir. Model Crim. Jury Instruction 4.12 (2006) *with* 3d Cir. Model Crim. Jury Instruction 4.12.

True enough, and we do not arrive at our holding lightly. However, the Model Instructions “are intended to be model, not mandatory.” 3d Cir. Model Crim. Jury Instructions intro. Although they are the result of thoughtful drafting, the accuracy of a particular statement “cannot be assumed” merely due to its presence in the Model Instructions. *Id.* That is especially so here, where the Model Instructions do not explain the basis for the statement’s inclusion.

Next, Strickland contends that rejecting this language “would require a wholesale reworking of the Model Criminal Jury Instructions because Instruction [] 4.12 is not the only instruction that requires proving certain essential facts beyond a reasonable doubt.” Reply Br. 6 n.2. He raises the example of Model Instruction 3.08, which he characterizes as requiring “that the Government prove beyond a reasonable doubt that the

offenses charged were committed on a date reasonably near the dates alleged.” *Id.*

Read in context, Model Instruction 3.08 does not mean what Strickland argues. It informs the jury that “[t]he Government does not have to prove with certainty the exact date of the alleged offense. It is sufficient if the Government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.” 3d Cir. Model Crim. Jury Instruction 3.08. The instruction does not require the Government to prove timing beyond a reasonable doubt; indeed, it relieves it of that burden. Of course, *that* the offense occurred at all must be proven beyond a reasonable doubt. The commentary further supports this reading by explaining that the extent a variance in timing is “reasonable” depends on whether it alters the elements of the offense charged or prejudices the defendant. 3d Cir. Model Crim. Jury Instruction 3.08 cmt. (citing *United States v. Somers*, 496 F.2d 723, 744 (3d Cir. 1974)). In any event, the possibility that other portions of the Model Instructions might be inaccurate does not control our analysis.

Because the final sentence of Model Instruction 4.12 is not legally correct, the District Court did not abuse its discretion by omitting it from the jury instructions.

II.B. Scope of Expert Testimony on Eyewitness Identifications

Second, Strickland argues the District Court erroneously excluded expert testimony about eyewitness identifications based on a single encounter. That may be so, but any error was harmless. *See United States v. Valentin*, 118 F.4th 579, 585–86 (3d Cir. 2024).

Federal Rule of Evidence 403 allows courts to “exclude relevant evidence if its probative value is substantially

outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury.” Invoking Rule 403, the District Court excluded the defense expert’s testimony about “eyewitness identifications based on a single encounter” and “characteristics of particular encounters,” such as viewing angle, duration, and stress. App. 61–62. It determined that such issues “would be substantially more confusing and prejudicial than probative, particularly given the numerous encounters between the undercover officer and the Defendant, as well as other corroborating identification evidence.” App. 61. It allowed the expert to testify “regarding issues applicable to an eyewitness’s multiple identifications of an individual.” App. 62.

Due to the fact-sensitivity of a district court’s determination under Rule 403, we are reluctant to disturb it “unless it was arbitrary or irrational.” *United States v. Fallon*, 61 F.4th 95, 109 (3d Cir. 2023) (quoting *United States v. Vosburgh*, 602 F.3d 512, 537 (3d Cir. 2010)). Here, it may have been. The Court reasoned that testimony about single-encounter identifications would be unhelpful because Detective Cooney encountered the suspect numerous times. But that misses the point of Strickland’s argument, which is that the only time Detective Cooney was asked to identify the suspect *as Strickland*—that is, to match the suspect with a confirmed photo of Strickland—was after his first encounter. Thereafter, he continued to meet with the suspect but was never again asked to compare him against a pre-identified photo. Accordingly, the only pre-trial identification was a single-encounter identification.³

³ Strickland also notes Detective Cooney did not pick him out of a lineup in that single identification. Instead, he was shown Strickland’s photo before his first encounter with the suspect,

However, any error was harmless in light of the “overwhelming corroborating evidence” regarding identity. *Valentin*, 118 F.4th at 586. The Government presented a slew of corroborating identification evidence at trial, including recorded calls, testimony from other law enforcement officers, co-conspirator testimony, the proximity of the transactions to Strickland’s residence, cell-site location data, and surveillance footage. Yet Strickland does not address any of this evidence or even mention the issue of harmlessness in his briefing. Because any error was harmless, we will not reverse on this basis.

II.C. Admission of Recordings in Bulk

Third, Strickland challenges the District Court’s admission of recorded prison calls in bulk rather than on a call-by-call basis. “We review a district court’s decision to admit evidence for abuse of discretion.” *United States v. Johnson*, 388 F.3d 96, 100 (3d Cir. 2004) (citing *United States v. Brown*, 254 F.3d 454, 458 (3d Cir. 2001)).

Federal Rule of Evidence 901(a) requires proffered evidence to be authenticated with “evidence sufficient to support a finding that the item is what the proponent claims it is.” Here, the District Court admitted a disc after a law enforcement officer testified that it contained recordings of calls that he had reviewed and explained how he recognized the voices on the calls.

Strickland does not dispute this authentication testimony. Instead, he maintains he should have had the

then again after the encounter. “Courts have recognized the suggestive nature of a single photo procedure.” *2019 Report of the U.S. Court of Appeals for the Third Circuit Task Force on Eyewitness Identifications*, 92 TEMP. L. REV. 1, 71 (2019).

opportunity to make “admissibility objections concerning the identity of the participants” in each individual call before it was played for the jury. Opening Br. 32. But he does not identify any specific objection he would have made if he had the opportunity. Nor did he attempt at trial to object to the admission of any particular call played for the jury. And any calls not played could not have prejudiced him. *See United States v. Phibbs*, 999 F.2d 1053, 1068 (6th Cir. 1993) (“As this evidence was never presented to the jury, defendants suffered no harm.”); *United States v. Troupe*, 702 F.2d 145, 147 (8th Cir. 1983) (*per curiam*) (similar); *United States v. Eliano*, 522 F.2d 201, 202 (2d Cir. 1975) (*per curiam*) (similar for portions of indictment not seen by jury). Therefore, any error on this front was harmless as well.

II.D. Sufficiency of Evidence

Finally, Strickland challenges the sufficiency of the evidence on the conspiracy charge. He argues the evidence was insufficient to establish that he was a participant in the conspiracy rather than only a customer of it.

Federal Rule of Criminal Procedure 29(a) allows defendants to move for “a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” We exercise plenary review over the District Court’s denial of Strickland’s motion under Rule 29. *United States v. Eddings*, 161 F.4th 199, 203 (3d Cir. 2025). However, we are “highly deferential” to the role of the jury. *Id.* (quoting *United States v. Caraballo-Rodriguez*, 726 F.3d 418, 430 (3d Cir. 2013) (*en banc*)). We overturn its verdict “only if, viewing the evidence in the light most favorable to the prosecution, ‘no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable

doubt.’” *Id.* (quoting *Caraballo-Rodriguez*, 726 F.3d at 430–31).

Here, the jury’s verdict cleared that deferential standard. Importantly, there was evidence that a co-conspirator “gave [Strickland] drugs on credit and awaited payment until after [Strickland] had sold the drugs to his customers. This arrangement is sufficient evidence of a conspiracy.” *United States v. Iglesias*, 535 F.3d 150, 156 (3d Cir. 2008).

III. CONCLUSION

Strickland’s arguments fail to overturn his convictions on appeal. His requested jury instruction, though included in the Third Circuit Model Jury Instructions, is not legally correct. Although the District Court may have erred in excluding his expert testimony, it was harmless. So too was any error in its admission of recordings in bulk. And there was sufficient evidence supporting the jury’s verdict on the conspiracy charge. We thus affirm.