

No. 22-4499

**United States Court of Appeals
for the Fourth Circuit**

UNITED STATES OF AMERICA,
Appellee,

v.

DAVID DARNELL WHITEHEAD,
Appellant.

*On Appeal from the United States District Court
for the Eastern District of North Carolina*

RESPONSE BRIEF OF THE UNITED STATES

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STATEMENT OF JURISDICTION

Defendant David Darnell Whitehead appeals from a judgment of conviction following a jury trial. Jurisdiction to the district court was established by 18 U.S.C. § 3231.

Jurisdiction to this Court is provided by 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The judgment was entered on August 26, 2022, and Defendant filed a timely notice of appeal on August 31, 2022. On September 8, 2022, a corrected judgment was entered.

STATEMENT OF ISSUES

Whether Defendant has met his “heavy burden” to overturn the jury’s verdict on each count of conviction where the evidence at trial showed:

1. On Count One, conspiracy to commit alien smuggling regarding two illegal aliens, K.N.O. and D.E.H., where Defendant’s wife told him about the alien smuggling plan; Defendant knew that his wife and her family were engaged in the alien smuggling business; Defendant transported K.N.O. and D.E.H from Boston to North Carolina at his wife’s request, knowing that K.N.O. and D.E.H. were illegal aliens; and Defendant knowingly sent three wire transfers at his wife’s request from the Walmart in Fayetteville, North Carolina, to different locations in Mexico, to bring K.N.O. and D.E.H. into the United States at a place other than a designated port of entry.

2. On Counts Seventeen and Eighteen, aiding and abetting the smuggling of aliens, where Defendant knowingly sent three wire transfers at his wife’s request from the Walmart in Fayetteville, North Carolina, to different locations in Mexico, to bring K.N.O. and D.E.H. into the United States at a place other than a designated port of entry.

3. On Counts Thirty-six, Thirty-seven, and Forty, money laundering, where Defendant knowingly sent three wire transfers at his wife’s request from the Walmart in Fayetteville, North Carolina, to different locations in Mexico, to bring K.N.O. and D.E.H. into the United States at a place other than a designated port of entry.

STATEMENT OF FACTS

Procedural History

In an indictment dated October 28, 2020, the grand jury charged Defendant with the following counts:

- Count 1: Conspiracy to Commit Alien Smuggling from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(i) and 1324(a)(1)(A)(v)(I).
- Count 2: Conspiracy to Transport Aliens for Commercial Advantage or Private Financial Gain from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(ii), 1324(a)(1)(A)(v)(I), and 1324(a)(1)(B)(i).
- Count 3: Conspiracy to Conceal, Harbor, or Shield from Detection Aliens for Commercial Advantage or Private Financial Gain from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(I), and 1324(a)(1)(B)(i).
- Count 4: Conspiracy to Commit Forced Labor by Means of Force, Threat, or Physical Restraint (K.N.O.) from January 2018 to October 28, 2020, in violation of Title 18, United States Code, Sections 1589(a)(1) and 1594(b).

- Count 5: Conspiracy to Commit Forced Labor by Means of Abuse, Threatened Abuse of Law, or Legal Process (K.Y.M.) from January 2018 to October 28, 2020, in violation of Title 18, United States Code, Sections 1589(a)(3) and 1594(b).
- Counts 6 through 8, and 15 through 18: Smuggling Aliens and Aiding and Abetting from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Sections § 1324(a)(1)(A)(i) and Title 18, United States Code, Section 2.
- Counts 9 through 11, 19, and 20: Transporting Aliens for Commercial Advantage or Private Financial Gain on October 23, 2018; October 23, 2018; October 23, 2018; July 4, 2019; and July 4, 2019, respectively, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(i).
- Counts 12 through 14, 21, and 22: Concealing, Harboring, or Shielding Aliens from Detection for Commercial Advantage or Private Financial Gain from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Sections 1324(a)(1)(A)(iii) and 1324(a)(1)(B)(i).
- Count 23: Forced Labor by Means of Force, Physical Restraint, and Threats of Physical Restraint and Aiding and Abetting (K.N.O.) from January 2019 to October 28, 2020, in violation of Title 18, United States Code, Section 1589(a)(1) and Title 18, United States Code, Section 2.

- Count 24: Forced Labor by Means of Abuse, Threatened Abuse of Law, or Legal Process and Aiding and Abetting (K.Y.M.) from January 2018 to October 28, 2020, in violation of Title 18, United States Code, Sections 1589(a)(3) and Title 18, United States Code, Section 2.
- Count 25: Attempting to Smuggle an Alien and Aiding and Abetting from January 2018 to October 28, 2020, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(i) and Title 18, United States Code, Section 2.
- Count 26: Benefitting Financially or Receiving Anything of Value from Forced Labor and Trafficking in Persons from January 2018 to October 28, 2020, in violation of Title 18, United States Code, Section 1589(b).
- Count 27: Conspiracy to Commit Money Laundering from September 27, 2018, to May 30, 2019, in violation of Title 18, United States Code, Section 1956(a)(2)(A), Title 8, United States Code, Sections 1324(a)(1)(A)(i) and 1324(a)(1)(B)(i), and Title 18, United States Code, Section 1956(h).

- Counts 28 through 42: Money Laundering and Aiding and Abetting on September 27, 2018; September 27, 2018; October 2, 2018; October 2, 2018; January 16, 2019; January 16, 2019; February 1, 2019; February 24, 2019; May 17, 2019; May 17, 2019; May 17, 2019; May 17, 2019; May 30, 2019; May 30, 2019; and May 30, 2019, respectively, in violation of Title 18, United States Code, Sections 1956(a)(2)(A) and 2.

On November 16, 2021, Defendant pleaded not guilty and proceeded to a jury trial. J.A. 9, Docket Entry 81; J.A. 343. Prior to trial the United States filed a motion to dismiss Counts 2, 3, 19, 20, 21, and 22. J.A. 39-40. At the close of evidence, the court granted Defendant's Rule 29 motion in part and entered a judgment of acquittal for Counts 4, 5, 26, and 27. J.A. 13-14, Docket Entries 131, 164; J.A. 250-252; J.A. 311. On June 1, 2022, the jury convicted Defendant on Counts 1, 17, 18, 36, 37, and 40. J.A. 188; J.A. 283; J.A. 312-313; J.A. 324-330; J.A. 333-339. Thereafter, on August 23, 2022, the court sentenced Defendant to 21 months per count, concurrent imprisonment, followed by one-year supervise release per count, to run concurrently. J.A. 326-327; J.A. 335-336. Defendant appealed.

Trial Evidence

Defendant David Darnell Whitehead and Martha Zelaya-Mejia (hereinafter “Martha”) were married in 2005 and have remained married approximately seventeen years. J.A. 170; J.A. 355-356, ¶ 44. They have five children together. J.A. 171; J.A. 355-356, ¶ 44. Martha is originally from Honduras. J.A. 172. She came into the United States illegally in 1995 when she was approximately 12 years old. J.A. 172-173.

Defendant knew that Martha and most of her family were living in the United States illegally. J.A. 173. Martha’s brother, Blas Celaya (hereinafter “Blas”), also a co-defendant in this case, is a “coyote” who helps smuggle people into the United States illegally. J.A. 173. Martha’s father, stepmother, and cousins are also involved in the alien smuggling business. J.A. 174. Defendant knew that Martha’s family was involved in the alien smuggling business and that Martha joined the business during their marriage. J.A. 174; J.A. 198.

James Brian Peterson (hereinafter “Peterson”) is a farmer from Pender County who raises coastal Bermuda grass and owns a solar farm. J.A. 107. Peterson met Defendant in 2017 at OneMain bank when Peterson was borrowing money to purchase equipment for his farm. J.A. 116. Defendant worked as a loan officer at the time. J.A. 116. As a result of this transaction, Defendant knew Peterson’s financial situation. J.A. 117. Peterson later met Martha in 2019 while

she worked as a waitress at the Sensation Restaurant in Wallace, N.C. J.A. 112; J.A. 115-116.

Before meeting Martha, Peterson had attempted to bring girls from Honduras into the United States, hoping to get a wife. J.A. 110-112. Once Peterson met Martha, they agreed to bring women from Honduras into the United States illegally J.A. 147-148. Peterson “assisted” in bringing three women from Honduras to the United States, two of which were supposed to be his wife. J.A. 111. Peterson paid Martha by cash or check to bring the women from Honduras into the United States. J.A. 132-134.

October 2018, K.M. Arrives in the United States

K.M. was the first woman Peterson and Martha brought from Honduras into the United States. J.A. 145; J.A. 149-154; J.A. 175. Originally, a friend of Peterson assisted him in bringing K.M. from Honduras to the United States. J.A. 113-114; J.A. 175. However, Peterson’s friend died before K.M. arrived. J.A. 113-114; J.A. 175. Since K.M. was in “transit,” Peterson sought Martha’s help to finish the transfer. J.A. 114-115. Martha spoke Spanish, so Peterson paid her \$12,000 to bring K.M. into the United States. J.A. 114-115. Peterson knew that a coyote would bring K.M. to the United States where she would go through immigration and then Peterson would pick her up in the United States. J.A. 115.

In her testimony, Martha explained the plan that K.M. and her two daughters would cross from Mexico into the United States to get “caught” by immigration. J.A. 176. Since K.M. was traveling with children, immigration would let them enter the United States. J.A. 176. Martha would pay the coyotes by Western Union or MoneyGram, with Peterson or they “would find other people [in] Wallace[, N.C.] to send the money over there.” J.A. 176. Martha referred to the coyotes as “smugglers” or “guides.” J.A. 182.

Martha identified a wire transfer sent to Villahermosa, Tabasco, Mexico, for \$1,000, as the first payment for the coyotes to send K.M. from Mexico. J.A. 177. K.M. testified that after that money was sent, she traveled up through Mexico to the northern border of Mexico and the United States. J.A. 156. Martha sent another wire transfer the day before K.M. entered the United States. J.A. 178. Martha testified that this wiring process was used to bring in all the other girls from Honduras to the United States. J.A. 178.

On October 3, 2018, K.M. entered the United States, crossing the border by river on an inflatable raft. J.A. 156; J.A. 178. Smugglers instructed K.M. to walk with her daughters until she found border patrol agents who would probably pick her up. J.A. 157. During this time, K.M. communicated with Martha. J.A. 114; J.A. 158. K.M. and her daughters walked for forty-five minutes before finding the border patrol. J.A. 157.

Once in the United States, K.M. thought that she and her daughters would go to Martha's house to stay, but Martha said that Defendant did not want them there. J.A. 157-158. K.M.'s Notice to Executive Office of Immigration Review listed Peterson's address and phone number as the destination. J.A. 227-228. K.M. and her two daughters flew from Texas to Wilmington, N.C., where Peterson picked them up at the airport. J.A. 117-118.

Peterson planned for K.M. to be his wife, but K.M. testified that she only stayed in Peterson's house for a little over a month. J.A. 118; J.A. 159; J.A. 178-179. Martha spoke Spanish to K.M. for Peterson. J.A. 114. He didn't know if Martha told K.M. that she was coming to the United States to be his wife. J.A. 118-119. According to K.M., Martha did not tell her that she was there to be Peterson's wife. J.A. 160. K.M. realized this plan later. J.A. 160. K.M. cooked and cleaned for Peterson, who tried to have relations with her. J.A. 119. Martha eventually helped K.M. escape from Peterson. J.A. 163-164; J.A. 179. K.M. had met the Defendant when she visited Martha and him at their house approximately three times. J.A. 159.

February 2019, A.M. Arrives in the United States

A.M. was the second woman Peterson and Martha brought from Honduras into the United States J.A. 119-121; J.A. 179-180; J.A. 229. Peterson paid

Martha \$20,000 to bring A.M. into the country. J.A. 121. A.M.'s Notice to Executive Office of Immigration Review listed Martha and Defendant's home address, and Martha's phone number, as the destination. J.A. 227-229. Peterson arranged A.M.'s flight from Texas to Wilmington, N.C. J.A. 120-121. Peterson discussed the prospect of A.M. coming to N.C. to be his wife, but once Peterson saw her, he thought she was too young. J.A. 119-122. In fact, A.M. was Blas's fiancé and the mother to his children. J.A. 178.

When A.M. first came into the United States in early 2019, she stayed with Martha and Defendant in their home. J.A. 179-180. Defendant knew that A.M. came from Honduras into the United States illegally. J.A. 180. Once through immigration, A.M. told Martha that she was pregnant. J.A. 180. Defendant did not want A.M. in their home during her pregnancy, along with Martha's niece and another child, so A.M. left Defendant's house to stay with Peterson at his home. J.A. 180. A.M. remained with Peterson for four months, after which she left for Boston, Massachusetts, to get a "public job." J.A. 122-123.

June 2019, K.N.O. Arrives in the United States

K.N.O. was the third woman Peterson and Martha brought from Honduras to the United States. J.A. 123; J.A. 180-181. Peterson wanted her to be his wife and paid Martha \$20,000 in cash to bring her into the country. J.A. 123.

Peterson provided \$10,000 that Martha sent via wire transfers to the coyotes to bring K.N.O. into the United States. J.A. 181. K.N.O. came with her eight-month-old boy, D.E.H. J.A. 181. On May 31, 2019, border patrol agents apprehended her and her son. J.A. 222-223. K.N.O. was detained for a short while and then released. J.A. 223.

Defendant knew that Peterson provided the money to bring K.N.O. from Honduras into the United States. J.A. 124-126; J.A. 181-182. Martha testified that Defendant was present and sent a wire payment for K.N.O.'s entry. J.A. 180-182. Peterson confirmed that Defendant was present for some of the money transferred by him to Martha for smuggling aliens into the country. J.A. 124-126. After one of these transfers, Defendant told Martha and Peterson that they were engaged in "human trafficking." J.A. 126. Peterson testified that Defendant was present when Peterson and Martha discussed the wire transfers to bring the girls here, and he (Defendant) knew the purpose of the funds. J.A. 124-126. In fact, Defendant sent three separate wires for K.N.O.'s entry because the coyotes would not want the same person sending all the money, which "raises suspicion" J.A. 181-182.

K.N.O. went to Texas once in the United States. J.A. 183. While there, she messaged Martha about coming to North Carolina to work. J.A. 181-183.

Peterson and Martha decided for K.N.O. to meet them in Boston. J.A. 184. Peterson and Martha bought an airline ticket for K.N.O. and her son to fly from Texas to Boston. J.A. 184.

Peterson and Martha traveled together to Boston. J.A. 184. However, Peterson left K.N.O. and Martha in Boston. J.A. 91; J.A. 126-127; J.A. 185. Stranded, Martha asked Defendant to drive to Boston to pick them up. J.A. 185; J.A. 190. When Defendant asked Martha for money to make the trip, she told him to take money from a closet where she had \$10,000 stored. J.A. 190. During a jail call, Defendant discussed taking money from the closet, at Martha's direction, to pick her up in Boston. S.A. 3. Martha told Defendant that Peterson had given her the money; that money was to pay for the "girls." J.A. 190-191.

Martha testified that if the amount to bring a girl into the United States was \$10,000, she would ask Peterson for \$20,000 so she could keep half. J.A. 191. Martha told Defendant that she kept the "other half" of the money paid by Peterson. J.A. 191.

Martha testified that when Defendant arrived in Boston, he stayed for three or four days. J.A. 191. During that time, Martha, Defendant, K.N.O., and her son were all "hanging out." J.A. 191. Defendant and Martha got into an argument as they packed up to leave Boston for North Carolina. J.A. 93-94; J.A. 191-192. The defendant hit Martha and threw her out of the truck. J.A. 93-94;

J.A. 192. Defendant left Martha behind and drove K.N.O. and D.E.H. back to North Carolina. J.A. 94; J.A. 192.

Once back to N.C., Defendant left K.N.O. and D.E.H. on the sidewalk after midnight at the Sheriff's Office in Cumberland County. J.A. 95-96; J.A. 127-129. Martha texted and called Peterson to tell him where to pick them up. J.A. 129. Peterson picked up K.N.O. and her son and took them back to his house. J.A.129-130. They stayed at Peterson's house for five weeks until K.N.O. called 911 when Peterson assaulted her. J.A. 130.

Peterson tried to bring a fourth woman, B.R., and her four daughters from Honduras into the United States to be his wife, but she never came. J.A. 131-132. B.R. is Martha's cousin. J.A. 194-195. Peterson paid Martha \$60,000 to bring B.R. into the United States. J.A. 195. The defendant knew about this arrangement. J.A. 195. Peterson met Martha and Defendant outside of the Walmart in Fayetteville, North Carolina where he gave Martha the money in the presence of Defendant. J.A. 148. Peterson knew that Martha and Defendant were going to wire the money at Walmart for a fourth girl. J.A. 148. Peterson thought the money was going to a coyote to "just get her through." J.A. 132. However, as far as Peterson knew, B.R. never made into the United States. J.A. 132.

Martha further confirmed that she deposited two checks from Peterson in the amount of \$21,000 on July 31, 2019, and \$53,000 on August 13, 2019, into her and Defendant's joint bank account at Cooperative Latina. J.A. 196-198.

Defendant knew the girls were coming from Honduras into the United States. J.A. 198. Defendant sent wire transfers for K.N.O., rather than Martha, because Martha "could not send any more money" without raising suspicion. J.A. 182. Recognizing the illegal conduct, Defendant warned Martha that she and Peterson could get in trouble for this plan. J.A. 198. Defendant admitted to sending the wire transfers. J.A. 241-242. In total, Defendant's name was listed on about 59 wire transfers through MoneyGram. J.A. 242; J.A. 244. While it was "common for him to transfer money to or from friends and family members through MoneyGram," it was not common for Defendant to send wires to Mexico or overseas. J.A. 242; J.A. 244. Defendant sent the wire money transfers from Walmart in Fayetteville, N.C. to Mexico. J.A. 230.

The evidence showed that two wires with Defendant's information were sent on May 17, 2019, and a third wire was sent on May 30, 2019. J.A. 231. The May 17 wires were \$500 each and sent about two and half minutes apart. J.A. 232. The first wire was sent to Ocosingo, Mexico, which is near the Guatemala and Mexico border. J.A. 232. The second wire was immediately sent after to Benemerito de las Americas, also near the border with Guatemala and Mexico.

J.A. 232-233. A third wire was sent 13 days later on May 30, to Reynosa, Mexico, which is directly across the border from Hidalgo, Texas. J.A. 233.

The evidence established that these payments fit a pattern used by alien smugglers. J.A. 234-236. A first payment is made to a smuggler as a deposit at the beginning of the transit. J.A. 235. People being smuggled into the United States from Central American countries are moved through Mexico. J.A. 235. Generally, once the aliens reach the border of Mexico and the United States, a second payment is sent to the smuggler before they cross over. J.A. 235-236.

In financial benefit to Martha and Defendant, Peterson bought a food truck trailer with Martha's face on the side of it and an SUV so that Martha could pull the food trailer. J.A. 136-138. However, she never pulled the trailer with the SUV. J.A. 137. Rather, both Martha and Defendant used the car, but Defendant drove it most of the time. J.A. 137. Defendant worked during 2018, 2019, and 2020. J.A. 237. Although, during the third quarter of 2019 (July to September), Defendant reported making \$3.72 in wages. J.A. 237. During this time, Peterson's smuggling payments were going into Defendant's household. J.A. 237-238.

Martha moved to Boston in 2017 for almost a year and a half but was back with Defendant in 2018. J.A. 218. Martha and Defendant were together for all

of 2019, when most of the women were brought from Honduras. J.A. 218. Martha and Defendant were still together in March of 2020, when Martha was arrested. J.A. 218.

Once Defendant was arrested, while in custody, Defendant was recorded on jail calls talking to his son and wife. J.A. 238. Defendant told his son, “It might be true maybe I should have known, you know what I’m sayin’ [sic] what your momma was doing and shit man, I had an idea she was doing something that she wasn’t supposed to be doing but it wasn’t my fucking business . . . It’s pretty hard for a motherfucker to snitch on they [sic] fuckin’ [sic] wife, you know what I’m sayin’ [sic] like what I ‘posed [sic] to do, was I ‘posed [sic] to snitch on momma, you feel me?” S.A. 2. Defendant told Martha, “. . . what good is it now that you done [sic] told these mother fuckers the truth. . . what good is it [sic] you know what I’m sayin’ [sic] for you to go back to fuckin’ [sic] Honduras and they and they [sic] gonna [sic] chop your fucking head off, you know what I mean, because you goddamn told on everybody . . .” S.A. 1; J.A. 261.

Prior to trial, the United States filed a motion to dismiss Counts 2, 3, 19, 20, 21, and 22 of the Indictment. J.A. 39-40. A trial proceeded on the remaining counts of the Indictment. Defendant’s trial lasted two days. The government called witnesses including current and former law enforcement from Pender County Sheriff’s Office, a special agent from Homeland Security Investigations,

victims, and co-conspirators to testify to the above and other information. The Court dismissed Counts 4, 5, 26, and 27. J.A. 250; J.A. 311. The jury convicted Defendant on the remaining six counts: 1, 17, 18, 36, 37, and 40. J.A. 283; J.A. 312-313. Defendant claims the evidence in support of each of those counts was insufficient.

SUMMARY OF ARGUMENT

Defendant participated in money laundering and in a conspiracy to smuggle illegal aliens, including aiding and abetting the smuggling of aliens K.N.O. and her son D.E.H. As to Count One, the evidence showed that Defendant's wife told him about the plan to smuggle aliens, Defendant knew that his wife and her family were engaged in an alien smuggling business. With this knowledge, and knowing that both K.N.O. and D.E.H. were aliens, Defendant transported them both from Boston to North Carolina at his wife's request so Peterson could pick them up. Defendant personally sent three wire transfers from the Walmart in Fayetteville, N.C. to three different locations in Mexico, as payments to smuggle K.N.O. and D.E.H. into the United States at a place other than a designated port of entry.

As to Counts Seventeen, Eighteen, Thirty-Six, Thirty-Seven, and Forty, Defendant aided and abetted in the smuggling of aliens K.N.O. and D.E.H. and engaged in money laundering by sending the three wire transfers from the Walmart in Fayetteville, N.C. to three different locations in Mexico, as payment to smuggle K.N.O. and D.E.H. into the United States at a place other than a designated port of entry.

The government presented clear evidence of these facts at trial and provided the jury a substantial basis for its verdict on each count of conviction. Defendant has failed to meet the heavy burden required to overturn the jury's ruling.

ARGUMENT

The Government Presented Substantial Evidence to Support the Jury's Guilty Verdict on All Six Counts of Conviction.

A. Standard of Review.

This Court reviews *de novo* a challenge to a district court's denial of a motion pursuant to Federal Rule of Criminal Procedure 29. *United States v. Ath*, 951 F.3d 179, 185 (4th Cir. 2020). Nevertheless, “[a] defendant challenging the sufficiency of the evidence to support his conviction bears a heavy burden.” *United States v. Beidler*, 110 F.3d 1064, 1067 (4th Cir. 1997) (internal quotation marks and citation omitted). This Court must “allow the government the benefit of all reasonable inferences from the facts proven to those sought to be established.” *United States v. Tresvant*, 677 F.2d 1018, 1021 (4th Cir. 1982) (citations omitted); accord *United States v. Roe*, 606 F.3d 180, 186 (4th Cir. 2010) (“We do not reweigh the evidence or the credibility of witnesses, but assume that the jury resolved all contradictions in the testimony in favor of the Government.”). This involves the consideration of “both circumstantial as well as direct evidence, and a conviction may rely entirely on circumstantial evidence.” *United States v. Bonner*, 648 F.3d 209, 213 (4th Cir. 2011). “[T]he relevant 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, 319 (1979). (emphasis omitted). Defendant can prevail only if “the prosecution’s failure is clear.” *Ath*, 951 F.3d at 185 (internal quotation marks omitted).

B. Discussion of Issue.

Defendant now claims that the evidence was insufficient as to each of his six counts of conviction. However, he cannot meet the burden required as to any of these counts.

1. The jury's verdict on conspiracy to commit alien smuggling was well supported by the trial evidence.

Count One charged Defendant with conspiracy to commit alien smuggling, which requires proof that: (1) one or more persons in some way agreed to accomplish a shared and unlawful plan; (2) the defendant knew the unlawful purpose of the plan and willfully joined it; and (3) the object of the conspiracy was that, knowing a person is an alien, to bring or attempt to bring into the United States such person at a place other than a designated port of entry. J.A. 276.

Defendant admits that a conspiracy to smuggle undocumented immigrants existed. Brief at 12-13. However, he disputes that there was sufficient evidence that he “joined the conspiracy or had any knowledge that K.N.O. was illegally in the United States or that she had entered the United States at a place other than a designated port of entry.” Brief at 16. Defendant claims that his “occasional” sending of MoneyGrams to Mexico is insufficient to show his knowledge and intent to join the conspiracy. Brief at 17. Similarly, Defendant argues that “the mere assistance in sending MoneyGrams is not sufficient to support the conspiracy allegations herein.” Brief at 17.

However, the evidence indicated extensive knowledge of the conspiracy by Defendant. Defendant's wife testified about her husband's knowledge that she and her family were involved in the alien smuggling business. J.A. 173-174; J.A. 182; J.A. 198. Defendant met and spent time with all three of the women that his wife and Peterson smuggled from Honduras to the United States. J.A. 159; J.A. 179-180; J.A. 191. The first woman, K.M., met Defendant at his home with his wife approximately three times. J.A. 159. The second woman, A.M., stayed with the Defendant and his wife in their home, which was listed as A.M.'s destination on her immigration paperwork. J.A. 179-180; J.A. 227-229. The third woman, K.N.O., spent three to four days "hanging out" with Defendant and his wife in Boston before Defendant drove her and her son back to North Carolina to meet Peterson. J.A. 92; J.A. 191.

Knowledge and intent may be proven through circumstantial evidence. *United States v. Bonner*, 648 F.3d 209, 213 (4th Cir. 2011). Here, Defendant sent three wire transfers from Fayetteville, N.C. to Mexico utilizing a pattern commonly used for payment to smuggle aliens along the route from Honduras to the border of the United States. J.A. 177-178; J.A. 232-235. The first two wires of May 17, 2019, were sent to the smuggler as an initial deposit near the Guatemala and Mexico border. J.A. 231-236. Since K.N.O. was being smuggled from Honduras, a Central American country, the smugglers required a subsequent payment once she reached the Mexico and United States border prior to crossing. J.A. 231-235. Defendant's wife confirmed this same pattern for the wire transfers

for all of the “girls” that were brought from Honduras to the United States. J.A. 178.

Moreover, testimony established that while it was “common for [Defendant] to transfer money to or from friends and family members through MoneyGram, [it was not] common for him to send wire transfers to Mexico or overseas.” J.A. 242; J.A. 244. Further, Peterson testified that Defendant was present for money transfers between Peterson and Martha, and Defendant acknowledged that his wife and Peterson were engaged in “human trafficking.” J.A. 126. Defendant told Martha, “. . . what good is it now that you done [sic] told these mother fuckers the truth. . . what good is it [sic] you know what I’m sayin’ [sic] for you to go back to fuckin’ [sic] Honduras and they and they [sic] gonna [sic] chop your fucking head off, you know what I mean, because you goddamn told on everybody . . .” S.A. 1; J.A. 261.

All this evidence created a reasonable inference that Defendant knew that his wife was engaged in an illegal activity, specifically an alien smuggling conspiracy, and that he sent those wire transfers to assist in bringing K.N.O. and D.E.H. from Honduras into the United States in furtherance of the conspiracy.

2. The jury’s verdict on the aiding and abetting smuggling of aliens K.N.O. and D.E.H. was well supported by the trial testimony.

Counts Seventeen and Eighteen charge the aiding and abetting of the smuggling of alien K.N.O. Both counts require the following: (1) that the de-

defendant knew that the crime charged was to be committed or was being committed; (2) that the defendant knowingly did some act for the purpose of aiding in the commission of that crime; and (3) that the defendant acted with the intention of causing the crime charged to be committed. J.A. 276-278.

Count Seventeen requires further proof that: (1) K.N.O. was an alien; (2) the person knew that K.N.O. was an alien; (3) the defendant brought an alien in any manner whatsoever to the United States at a place other than a designated port of entry; and (4) the defendant acted willfully. J.A. 277.

Count Eighteen requires further proof that: (1) D.E.H., a minor child of K.N.O., was an alien; (2) the defendant knew that D.E.H. was an alien; (3) the defendant brought an alien in any manner whatsoever to the United States at a place other than a designated port of entry; and (4) the defendant acted willfully. J.A. 278.

Defendant argues that there was no evidence that he knew K.N.O. and D.E.H. were brought to the United States at a place other than a designated port of entry. Brief at 19. Defendant further argues that there was insufficient evidence of his knowledge that K.N.O. and D.E.H. “had entered the United States at a place other than a designated port of entry or that he willfully transported [K.N.O. and D.E.H.] from Boston to North Carolina knowing they had entered the United States at a place other than a designated port of entry.” Brief at 21.

The government specifically incorporates herein by reference the facts and arguments supporting Argument One above. Notably, Defendant admitted to sending the wire transfers to Mexico. Brief at 13; J.A. 241-242. At his wife’s

request, Defendant sent the three wire transfers from Fayetteville, North Carolina to Mexico to avoid raising suspicion about the illegal activity. J.A. 181-182; 198. These wire transfers paid the coyotes to bring K.N.O. and D.E.H from Honduras into the United States. Without these transfers, the plan would have failed. Consequently, Defendant aided and abetted the smuggling of K.N.O. and D.E.H., as the jury found.

3. The jury's verdict on money laundering was well supported by the trial testimony.

Counts Thirty-six, Thirty-seven, and Forty involved Defendant sending three money wire transfers from the Walmart in Fayetteville, N.C. to locations in Mexico for the purpose of an illegal activity, to wit alien smuggling. In relation to these wire transfers, Defendant was charged with three counts of money laundering. J.A. 278. All three counts require proof that: (1) the defendant transported, transmitted or transferred a monetary instrument or funds; (2) this was done from a place in the United States to a place outside of the United States; and (3) the defendant did so with the intent to promote the carrying on of an unlawful activity; here that would be the unlawful activity of bringing to the United States aliens with knowledge that the aliens entered at a place other than a designated port of entry. J.A. 279. Counts Thirty-six and Thirty-seven were the MoneyGram wire transfers sent on May 17, 2019, two and half minutes apart, in the amount of \$500 each. Brief at 23; J.A. 33-34; J.A. 231-232. Count 40 was the MoneyGram wire transfer in the amount of \$1,000 sent on May 30, 2019. Brief at 23; J.A. 33-34; J.A. 231-232.

Defendant admits that he sent “some MoneyGrams to Mexico,” while also conceding that there was some evidence that he assisted in sending MoneyGrams from the United States to Mexico. Brief at 13, 24; J.A. 241-242. However, Defendant argues that there was insufficient evidence that he sent the MoneyGrams with the “intent to promote the carrying on of a specified unlawful activity, to bring to the United States aliens with the knowledge that said aliens entered the United States at a place other than a designated port of entry.” Brief at 24.

The government specifically incorporates herein by reference the facts and arguments supporting Argument One. The government presented substantial evidence that Defendant knew the money he sent was for the purpose of smuggling aliens K.N.O. and D.E.H. into the United States. Besides the testimony of his wife and Peterson, the timing and location of the wire transfers in relation to the movements of the aliens, K.N.O. and D.E.H. through Mexico to the United States border matched the smuggling pattern presented to the jury. A pattern that according to Martha, was used throughout the smuggling of the other women.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that the jury's verdict should be affirmed.

Respectfully submitted, this 8th day of May, 2023.

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CERTIFICATE OF COMPLIANCE

1. Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that this brief meets the page or type-volume limits of Rule 32(a) because, exclusive of the portions of the document exempted by Rule 32(f), this brief contains:

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