Nos. 25-4282(L), 25-4283

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SHRONDA COVINGTON and TONYA FARLEY,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

CONSOLIDATED BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT OF JURISDICTION

This appeal is from a district court's final Judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court sentenced defendant-appellant Shronda Covington on May 7, 2025, and sentenced defendant-appellant Tonya Farley on May 8, 2025. JA35, JA71.[1] The court entered final Judgment for both defendants-appellants on May 8, 2025. JA5055-5068. Farley filed a timely Notice of Appeal on May 13, 2025, and Covington filed a timely Notice of Appeal on May 15, 2025. JA5069-5070. This Court has jurisdiction under 18 U.S.C. 3742(a) and 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

1. Whether sufficient evidence supported Covington's conviction for willfully violating W.W.'s constitutional rights under color of law under 18 U.S.C. 242 and Covington's and Farley's convictions for knowingly or

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[1] Citations to "JA___" refer to the Joint Appendix and Sealed Joint Appendix filed by defendants-appellants Covington and Farley. Citations to "Covington Br. ___" refer to Covington's Corrected Opening Brief, which are followed by relevant page numbers. Citations to "Farley Br. ___" refer to Farley's Corrected Opening Brief, followed by relevant page numbers.

willfully making materially false statements and representations to a federal officer under 18 U.S.C. 1001.

2. Whether the district court abused its discretion in admitting evidence relating to W.W.'s time in the suicide-watch cell and excluding evidence of W.W.'s criminal record.

3. Whether the district court abused its discretion in denying Covington's Motion to Sever her trial from that of her properly joined co-defendants.

4. Whether the district court abused its discretion in rejecting appellants' Proposed Jury Instructions on proximate cause, hindsight, willfulness, and good faith.

5. Whether the district court abused its discretion in denying Farley's Motion for a New Trial.

6. Whether the prosecution and district court suppressed exculpatory evidence.

7. Whether Farley's sentence for her Section 1001 conviction was procedurally reasonable.

STATEMENT OF THE CASE

A. Factual Background

1. Covington's And Farley's Conduct During W.W.'s Medical Crisis

W.W. was an inmate in the custody of the Bureau of Prisons (BOP) Federal Correctional Institution, Petersburg (FCI Petersburg). JA2248-2249. Beginning in the early morning hours of January 9, 2021, and continuing until his death the next day, W.W. exhibited sudden and severe medical symptoms, including incontinence, incomprehension, incoherence, and the inability to stand or walk without falling. JA1907-1908, JA1912-1913, JA1915, JA1917, JA1920, JA2028-2030, JA2097-2099, JA2105, JA2168-2170, JA2222-2224, JA2253. Without medical attention to address his readily apparent crisis, W.W. repeatedly fell into walls and other objects, causing significant bruising and bleeding to his head and other parts of his body. JA1765, JA5836, JA5840. After sustaining multiple skull fractures and brain bleeding, W.W. died of blunt force trauma to the head. JA1592, JA1612-1613. According to the medical examiner, Dr. Julia Berry, W.W. could have lived had he been hospitalized and examined at any point during his medical crisis. JA1644-1648.

Defendant-appellant Covington was the Operations Lieutenant and the highest-ranking officer at the prison from midnight to 8 a.m. on January 9, 2021, when W.W.'s medical crisis began. JA1747-1749, JA3179-3180, JA3188. At that time of night, when only one supervisor is on duty and no medical staff are on site, BOP policy requires correctional officers to notify the Operations Lieutenant if there is an inmate who requires medical assistance. JA3180-3182, JA5909. BOP policy then requires the Operations Lieutenant to respond to the cell and call the facility's 24-hour on-call physician, send the inmate to the hospital, or both. JA3178, JA3181-3184, JA3222. BOP policy and practice also require Lieutenants to respond to housing units whenever the housing unit officer requests assistance. JA3185.

W.W.'s cellmate, Herbert Southerland, notified two correctional officers working in his housing unit of W.W.'s symptoms, and these officers also observed W.W.'s symptoms for themselves. JA1908-1911, JA1917-1918, JA2092, JA2097-2099, JA2105, JA2168-2170. One of those officers, Shantae Moody-Moore, twice called Covington to report W.W.'s symptoms and request medical help. JA2100-2109, JA2174-2176, JA2217, JA2687-2688. Covington twice promised to come to the housing

unit but did not do so. JA2102, JA2107, JA2109-2110, JA2176, JA3189. When Covington failed to respond, the second officer who observed W.W., Lakeshia Barnes, went to Covington's office and told Covington again about W.W.'s symptoms. JA2177-2180, JA2216-2217. For a third time, Covington promised to go see W.W. JA2180. At that time of night, there was no other Lieutenant at the facility. JA2253. Only Covington had the authority and, pursuant to BOP policy, the duty, to assess W.W. and notify the on-call physician, send W.W. to the hospital, or both. JA2253-2255.

Despite Covington's repeated promises and BOP policy requiring her to respond to the housing unit, Covington never went there. JA1911, JA1918, JA2110-2111, JA3189-3190, JA3225-3226. Indeed, she admitted she took "no action" for W.W. despite BOP policy requiring her to address his medical issue: she did not contact the on-call physician, call 911, telephone the officers back to check on them or on W.W., or ask another officer to check on W.W. or the officers. JA2110, JA3190-3192, JA3219-3221. Instead, Covington called Correctional Officer Moody-Moore and asked her to enter a false record saying that Covington had conducted her required "rounds," or patrols, in W.W.'s housing unit, which she had

not. JA2111-2112, JA3190. When Covington's shift ended at 8 a.m., she left the facility. JA3145. W.W. continued exhibiting the same symptoms, including falling headfirst into walls, after Covington left the facility. JA1765.

Defendant-appellant Farley was a BOP registered nurse who worked from approximately 11 a.m. to 9 p.m. on January 9, 2021, and the only nurse to medically assess W.W. in the facility's medical unit during his medical crisis. JA2562, JA2566, JA3685, JA3688-3689, JA3702, JA3733. Farley was informed that W.W. had fallen, personally observed an injury to W.W.'s head consistent with a fall, and admitted that she knew W.W. needed to go to the hospital because he could be experiencing a head injury, which could lead to brain swelling and death. JA2562-2563, JA2566, JA2570-2571, JA2579, JA6108-6110. Although Farley witnessed and even documented W.W.'s obvious and alarming symptoms, and although, by her own admission, she knew W.W. needed to go to the hospital, she did not send W.W. to the hospital or report his symptoms to the facility's on-call physician, as she knew she was required to do under BOP policy and Nursing Protocols. JA1924-1925, JA2356-2362, JA2562-2565, JA2567-2569, JA3686, JA3722-3723, JA3728, JA3733-3735,

JA3748, JA3752-3753, JA3760. Instead, Farley wrote a Clinical Encounter Report (1) indicating that W.W. had fallen and had an abrasion on his head; had an abnormally high pulse and dilated pupils; was disheveled and unkempt; had a slow and unsteady gait; was slurring his speech; and could not communicate who he was, where he was, and what time it was; but (2) nevertheless, asserted that W.W. exhibited no signs of acute distress and that he verbalized understanding of his care despite his inability to talk. JA2365-2369, JA2574-2578, JA3690-3692, JA3742-3747, JA6108-6110.

Rather than contacting the on-call physician, Farley called the facility's on-call psychologist, Dr. Lacie Biber, informed her of W.W.'s condition, and stated that W.W. would not be going to the hospital. JA2468-2470. Farley asked Dr. Biber to authorize W.W.'s placement on suicide watch, which Dr. Biber refused to do until Farley falsely told Dr. Biber that there was concern that W.W. might use a razor to hurt himself. JA2470-2472. After W.W. was taken to the suicide-watch cell, Farley left the facility without notifying any other healthcare provider of W.W.'s condition or seeking any additional care for him. JA2581, JA3702, JA3742. For about ten hours in that cell, W.W. continued to exhibit the

same symptoms as before, including repeatedly falling and hitting his head, and he was unable to leave or communicate. JA1764-1766, JA1853, JA2782-2783, JA5452-5453. W.W. fell head-first into a wall and to the floor on the morning of January 10, 2021, and did not move again. JA2325. He was pronounced dead shortly thereafter. JA2924.

2. Covington's And Farley's False Statements To Federal Investigators

Two federal agents from the Department of Justice Office of the Inspector General (OIG), including Senior Special Agent Anya Whitney, conducted a voluntary interview with Covington in February 2023. JA2542-2543. Covington admitted that Correctional Officer Moody-Moore called her twice about W.W. but insisted that Moody-Moore said nothing about W.W.'s symptoms. JA2544-2545, JA2553-2555. Covington claimed that, during the first call, Moody-Moore reported only that W.W. was walking around his cell and listening to music, and that, during the second call, Moody-Moore reported only that W.W. was doing push-ups. JA2544. Covington admitted that if she had been aware that W.W. was experiencing a medical issue, she would have had an obligation to respond to W.W.'s cell. JA2558. Covington also denied asking Moody-Moore to falsify rounds records and denied that any other officer,

including Correctional Officer Barnes, had talked to her about W.W. JA2544-2545.

Agent Whitney conducted a voluntary interview with Farley in April 2023. JA2560-2561, JA3730-3731. During the interview, Farley blamed Dr. Biber and the on-call physician, Dr. Ericka Young, for her failure to send W.W. to the hospital. Specifically, Farley claimed that after she informed Dr. Biber of W.W.'s condition, Dr. Biber responded that W.W. was malingering (or "faking symptoms") and instructed Farley to place him on suicide watch. JA2423, JA2514, JA2572-2573. Farley also stated that she called Dr. Young from the medical unit's telephone to notify her of W.W.'s symptoms and that Dr. Young discouraged her from sending W.W. to the hospital because he did not have a medical issue. JA2571-2572, JA2579-2580. When investigators told Farley that telephone records showed that she made no such call and offered her the opportunity to amend her statement, Farley insisted that she was "sticking to" her story. JA2582-2584, JA2690-2691.

B. Procedural Background

1. Indictment

In August 2023, a federal grand jury in the Eastern District of Virginia returned a six-count Superseding Indictment charging Covington, Farley, and their colleague, FCI Petersburg Senior Officer Specialist Yolanda Blackwell, with violating various federal criminal statutes relating to W.W.'s medical crisis and death. JA93-99. Counts 1, 2, and 3 charged that Covington, Farley, and Blackwell, respectively, while acting under color of law, willfully deprived W.W. of his constitutional right to be free from cruel and unusual punishment through deliberate indifference to his serious medical needs, resulting in bodily injury and death, in violation of 18 U.S.C. 242. JA94-96. Count 4 charged that Farley knowingly made a false entry in her Clinical Encounter Report following her medical assessment of W.W., with the intent to obstruct a federal investigation, in violation of 18 U.S.C. 1519. JA96. Counts 5 and 6 charged that Farley and Covington, respectively, knowingly and willfully made materially false statements to federal agents investigating W.W.'s death, in violation of 18 U.S.C. 1001. JA97-98.

2. The Government's Motion To Exclude Evidence Of W.W.'s Conviction Offense And Alleged Malingering

In September 2023, the Government moved in limine to preclude appellants from offering improper bad character evidence of W.W. at trial. JA6136-6139. The Government argued that evidence of W.W.'s conviction and sentence for production of child pornography and alleged malingering was not relevant under Federal Rules of Evidence 401 and 402 because appellants were unaware of this information at the time of the charged conduct and because it did not bear on the charges against them. JA6138-6139, JA6147-6148. The Government further argued that the prejudicial nature of this evidence significantly outweighed its probative value, warranting exclusion under Federal Rule of Evidence 403, because it would confuse the jury and encourage jurors to decide the case on an improper basis—*i.e.*, their personal feelings about W.W.'s criminal history. JA6139, JA6148-6149. Finally, the Government argued that the evidence should be excluded as improper character evidence under Federal Rule of Evidence 404. JA6149-6151.

The district court granted in part and denied in part the Government's Motion. JA6186-6197. The court first determined that

evidence pertaining to W.W.'s criminal history was not admissible under Rules 402 and 404(a)(2)(B) as a pertinent trait because it did not have any tendency to make any element of Farley's Section 242 charge less likely. JA6188-6191, JA6194. The court then found that evidence pertaining to W.W.'s alleged malingering, if considered medical dishonesty, was pertinent to Farley's Section 1001 charge and potentially pertinent to her Section 242 charge under Rule 404(a)(2)(B) because it tended to make an element of each charge less probable. JA6192-6193. The court further found that because W.W.'s medical dishonesty was not an "essential element" of any charge or defense, this evidence was admissible under Rule 405 only as reputation or opinion testimony and not excludable under Rule 403 if so limited. JA6193-6194 & n.8.[2]

Farley moved to reconsider the court's decision, arguing that evidence relating to W.W.'s criminal history was pertinent under Rule 404(a)(2)(B) because it explained his alleged malingering, which the

[2] The district court addressed the Government's Motion in Limine to preclude use of evidence of W.W.'s criminal history and alleged malingering only with respect to Farley because Covington did not join Farley's opposition to the Government's Motion concerning this evidence. JA6187 n.3.

court found admissible. JA6653-6665. Farley reasoned that BOP's on-call psychologist, Dr. Biber, knew from W.W.'s mental health records that he faked self-harm behaviors to be placed in the suicide-watch cell because he feared that other inmates were aware of the sexual nature of his offense and would harm him. JA6655-6656, JA6661-6664. The district court rejected this argument, reiterating that evidence regarding W.W.'s criminal history was not relevant "[e]ven when shoehorned into the context of W.W.'s alleged proclivity for malingering." JA6937-6938.

3. Covington's Motions To Sever Trial And To Exclude Evidence Of W.W.'s Time In The Suicide-Watch Cell

In November 2023, Covington moved to sever her trial from her co-defendants and moved in limine to exclude evidence pertaining to W.W.'s time in the suicide-watch cell after her work shift ended, including a surveillance video of W.W., a suicide-watch log documenting W.W.'s conduct prepared by two inmates who observed him through a window, and witness testimony about W.W.'s time in the cell. JA213-276. Both Motions alleged that this evidence was irrelevant to the Section 242 charge against Covington under Rules 401 and 402 because it concerned events after she left the facility and, in any event, was also excludable as

prejudicial under Rule 403 because it would likely inflame the passions of the jury and increase the chance of an unreliable verdict. JA220-225, JA252-256. The Motion to Sever further alleged that the jury would not be able to compartmentalize the admissible and inadmissible evidence against each defendant (JA223), and that the court could not mitigate the risk of unfair prejudice through limiting instructions, "given that the vast majority of evidence presented at a joint trial will be irrelevant and unfairly prejudicial" (JA226).[3]

The district court denied the Motion in Limine upon finding that evidence of W.W.'s time in the suicide-watch cell was relevant and not prejudicial. First, the court determined that this evidence was probative of Section 242's "bodily harm or death results" element because it was relevant as to whether appellants caused W.W.'s bodily injury and death and was probative of the statute's "deliberate indifference" element because it had some tendency to prove that W.W. had an objectively serious medical need. JA442-443. Second, the court concluded that the evidence "d[id] not clear the high bar for exclusion" under Rule 403

[3] Farley moved to join Covington's Motion to Sever and Motion in Limine (JA277-280), which the district court granted (JA283).

simply because it was damaging to appellants' cases, given their opportunity to explain to the jury that they were not on the premises for the entirety of the suicide-watch video and related evidence. JA445-446. Based on the court's rejection of appellants' relevance and prejudice arguments, "the legal predicate on which th[e] severance argument [wa]s built," the court also denied Covington's Motion to Sever. JA456-457.

4. Appellants' Motions To Continue Trial And For An Order Requiring The Government To Search The BOP Email System

In April 2024, just 12 days before trial was scheduled to begin, appellants moved to continue the trial (JA699-705) and for an order requiring the Government to search the BOP email system for emails by BOP witnesses discussing appellants, the facts of the case, and the investigation and prosecution, because appellants had "no idea what, if anything" witnesses had said on the email system, and those emails "could be" critical to appellants' case (JA678-679). After holding a hearing on the Motions and recognizing that it would be unworkable to require the Government to retrieve approximately three million emails, the district court ordered the Government to (1) reinterview every BOP witness and obtain and produce documents these witnesses wrote about

the case; (2) reinterview suspects who were not charged and BOP personnel who could explain why those suspects were not charged, and relay that information to appellants; and (3) investigate and turn over information relating to any BOP employees who faced discipline because of the incident involving W.W. but were not charged criminally. JA1015-1017. The Government complied with this order (JA1021-1030), and appellants did not raise any additional concerns (JA1067).

5. The Government's Motion To Modify Or Quash Appellants' Overbroad Subpoenas

Appellants subsequently served several Government witnesses and FCI Petersburg with trial Subpoenas under Federal Rule of Criminal Procedure 17(c). JA1046-1062. The witnesses' Subpoenas required production of "all records" related "in any way" to "internal Bureau of Prisons disciplinary investigations," "the official OIG investigation," "FCI Petersburg," W.W.'s death, and a list of 11 BOP officials, for the time frame ranging just before W.W.'s death, January 2021, to the date of service, May 2024. JA1048, JA1052, JA1055. The FCI Petersburg Subpoena required production of (1) training records "that comment in any way on the circumstances surrounding W.W.'s death" from 2020 to the date of service (JA1034); (2) internal investigation materials related

"in any way to the Bureau of Prison's [sic] investigations into W.W.'s death" (JA1034); (3) video footage for specified areas of the facility; (4) logbook records "that mention Ms. Shronda Covington" (JA1034); (5) "any records related to BOP's referral" of Covington to OIG (JA1034); (6) "written communications including emails, text messages, and other messages from nine current and former BOP officials" for a more than three-year period that reference Covington, the investigation into W.W.'s death, and the suicide of another witness, among other matters (JA1035); (7) "documents relating to disciplinary actions relating to" seven witnesses (JA1035); and (8) "suicide[-]watch logs for W.W.'s time in suicide watch" (JA1035). *See also* JA1060-1062.

The Government moved to modify or quash the Subpoenas to comport with the requirements of Federal Rule of Criminal Procedure 17 (JA1033-1045), and the district court granted this Motion in part and denied it in part (JA1117-1123). The court modified the Subpoenas to require production of only those documents that Covington did not already possess (JA1120), and to remove categories (6) and (7) of the FCI Petersburg Subpoena, which sought impeachment material, a use unauthorized by Rule 17(c) (JA1120-1121). The court did not otherwise

limit or modify the Subpoenas. The court instructed Covington to file modified Subpoenas complying with the court's order (JA1124), and she did so (JA1125-1131).

6. Appellants' Proposed Jury Instructions

In November 2024, appellants, citing non-precedential, out-of-circuit case law, requested the court instruct the jury that "[d]eliberate indifference must be determined with regard to the relevant prison official's knowledge at the time in question, not with hindsight's perfect vision" (JA1169); that the term "willfully" in Section 242 requires that the defendant act "with the intent not only to act with a bad or evil purpose, but specifically to act with the intent to deprive a person of a federal right made definite by . . . the express terms of the Constitution or federal law or by decisions interpreting them" (JA1170); that to prove that W.W. died or suffered bodily injury as a result of the defendant's conduct under Section 242, the Government must show that "W.W.'s death or bodily injury was a proximate result of the defendant's conduct, in the sense of being a natural and foreseeable result of that conduct" (JA1173); and that the jury must acquit the appellants if the evidence

left it "with a reasonable doubt as to whether [they] acted in good faith" (JA1183).

7. Trial And Post-Trial Proceedings

The case proceeded to trial in December 2024. JA21 (Docket entry 287). At the close of the Government's case, Covington, Farley, and Blackwell moved under Federal Rule of Criminal Procedure 29 for a judgment of acquittal on the counts for which they were indicted based upon insufficient evidence, which the court denied. JA2952-3000. At the close of evidence, all three defendants renewed their Motions for Judgment of Acquittal, which the court again denied. JA3950-3962. The court then rejected appellants' Proposed Jury Instructions on proximate causation (JA3997), hindsight (JA3979-3980), the definition of the term willfully (JA3981-3982), and good faith (JA3997-3998). *See also* JA4319-4323, JA4327-4333, JA4334-4342.

After an 11-day trial, the jury convicted Covington on Count 1, deprivation of rights under color of law in violation of 18 U.S.C. 242, and further found that this offense resulted in W.W.'s bodily injury but not his death. JA1296. The jury also convicted Farley on Count 5 and Covington on Count 6, false statements in violation of 18 U.S.C. 1001.

JA1298. The jury acquitted Farley on the other counts with which she was charged (alleging violations of 18 U.S.C. 242 and 1519) and Blackwell on the sole count against her (alleging a violation of 18 U.S.C. 242). JA95-96, JA1297-1298.

Following the Verdict, Covington filed a Motion for a Judgment of Acquittal seeking reversal of both counts of conviction. JA6320-6345. Covington first argued that the 18 U.S.C. 242 charge failed because the Government did not prove that (1) W.W. had an objectively serious medical need of which Covington had knowledge; (2) Covington acted willfully; and (3) Covington caused W.W. serious bodily injury. JA6326-6340. She further contended that the district court's failure to provide appellants' requested jury instructions about proximate cause, hindsight, and willfulness related to the Section 242 elements she challenged and contributed to the mistaken verdict. JA6327, JA6330-6331, JA6334-6337. Covington also argued that the Government failed to establish that her false statements were material, as 18 U.S.C. 1001 requires. JA6341-6344.[4]

[4] Covington also filed a Motion for a New Trial, arguing that a new trial was warranted by the Government's (1) various violations of its

The district court denied Covington's Motion. JA5072-5091. First, the court held that the Government presented substantial evidence for the jury to find all the Section 242 elements Covington challenged. JA5074-5086. In so concluding, the court found that appellants' proposed proximate-cause and willfulness instructions were unnecessary because the court's instruction comported with precedents of this Court and the Supreme Court (JA5080, JA5084); and that her proposed hindsight instruction was unnecessary because the court's instruction "substantially covered the issue of concern," and the only case Covington cited in support was a nonbinding, out-of-circuit civil case (JA5075). The court also determined that a jury reasonably could have inferred the materiality of Covington's false statements under Section 1001 because, *inter alia*, "Covington's statements called into question the truthfulness

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obligations to disclose exculpatory material and impeachment evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and the Jencks Act; (2) knowing use of false testimony of several witnesses; (3) misconduct during closing argument; and (4) personal animus toward her. JA4439-4489. The district court denied this Motion (JA5120-5159), and Covington does not re-raise any of the Motion's specific arguments on appeal.

of the actions reported by other witnesses and could therefore have redirected the investigation towards those individuals." JA5091.

Farley also moved for a judgment of acquittal and a new trial. JA4418-4434. Like Covington, Farley argued that the Government's failure to prove the materiality of her false statements to OIG agents regarding her phone call to the on-call physician warranted reversal of her conviction under 18 U.S.C. 1001. JA4423-4424. She further contended that appellants' requested jury instruction about good faith was a correct statement of the law not addressed by the other instructions and that the district court's failure to provide that instruction impaired her defense to the Section 1001 charge. JA4423.

Farley also asserted that she was entitled to a new trial on several grounds. First, Farley argued that she suffered the prejudicial effect of "spillover of evidence" that would not have been admissible had she been tried solely on her count of conviction and without her co-defendant, Blackwell. JA4425-4429. Next, Farley argued that the trial errors she and Covington raised cumulatively resulted in extreme prejudice and unfair treatment. JA4432. Finally, in her reply in support of her Motion, Farley argued for the first time that the Government's failure to correct

the false testimony of medical examiner Dr. Berry violated her due process rights under *Napue v. Illinois*, 360 U.S. 264 (1959). JA4712-4714.[5]

The district court denied this Motion. JA5092-5119. First, the court determined that acquittal was not warranted on Farley's Section 1001 charge because, *inter alia*, her false statements regarding her call to the on-call physician, Dr. Young, could "have redirected the agents' investigation toward Dr. Young and/or others" "insofar as [the] statements called into question the truthfulness of the actions reported by Dr. Young." JA5103. In so concluding, the court rejected appellants' Proposed Instruction on good faith because it followed this Court's precedent in properly instructing the jury on the specific intent required for the Section 1001 false-statement charge. JA5099-5100.

The court also rejected Farley's arguments for a new trial. First, the court determined that Farley's argument that the spillover evidence was unfairly prejudicial "fail[ed] across the board" because "the Court's

[5] Covington moved to adopt the arguments presented in Farley's Motion for a New Trial insofar as they were applicable. JA4435-4437. The district court granted this Motion. JA4572-4573.

explicit jury instructions . . . instructed the jury to consider each count separately." JA5116. The court further observed that the prejudicial evidence cited by Farley—video of W.W.'s injuries and death in the suicide-watch cell, beginning mere minutes after his encounter with Farley—likely would have been admissible in a new trial (JA5117 n.10) and that Farley's co-defendant, Blackwell, was properly joined (JA5117 n.12). The court also concluded that the trial errors Farley and Covington raised did not merit a new trial when considered individually and did not cumulatively "weigh so heavily against the verdict that it would be unjust to enter judgment." JA5118-5119 (alteration and citation omitted). Finally, the court found that Farley waived her *Napue* argument by failing to raise it in her original Motion and that, in any event, the argument was unavailing because Dr. Berry's testimony was not false. JA5110-5111.

8. Sentencing Of Farley

Before sentencing, a probation officer prepared a Presentence Investigation Report (PSR) for Farley that calculated a base offense level of six under Sentencing Guidelines § 2B1.1(a)(2) for her Section 1001 conviction. JA6863. The PSR added eight levels under Section

2B1.1(b)(16)(A) because the offense involved the conscious or reckless risk of death or serious bodily injury (JA6863); two levels under Section 3A1.3 for physical restraint because W.W. was placed in a suicide-watch cell based on Farley's misleading information, where he was unable to leave or communicate for more than 12 hours (JA6863); two levels under Section 3A1.1(b) because Farley knew that W.W. was a vulnerable victim due to his serious medical condition, his inability to communicate, and his complete dependence on prison officials for medical care (JA6862, JA6864); and two levels under Section 3B1.3 for abuse of position of trust or special skill because Farley was a BOP nurse entrusted with W.W.'s care and treatment (JA6863-6864). These adjustments resulted in a total offense level of 20. JA6864. Combined with Farley's criminal history category of I, her advisory guidelines sentence was 33 to 41 months' imprisonment. JA6869.

The Government did not object to this calculation. JA4881. Farley lodged several factual and legal objections. JA4899-4918. Most notably, Farley argued that calculating her guidelines with reference to W.W.'s death and injury would amount to punishing her for acquitted conduct, contrary to the recent acquitted-conduct amendment to the guidelines.

JA4902, JA4905-4914; *see also* Sentencing Guidelines § 1B1.3(c). Farley also objected to every upward enhancement. JA4914-4918. In sum, Farley argued that her total offense level should be the same as her base offense level, four, resulting in a guidelines range of zero to six months. JA4900.

At Farley's sentencing hearing, the district court began by rejecting her argument that it should categorically disregard her conduct during W.W.'s medical crisis, reasoning that, "[t]o find otherwise would overlook . . . the role that that conduct played in her false statements." JA5346. The court made clear, however, that it was "*not* relying on Ms. Farley's acquitted conduct that Ms. Farley made a false report or was deliberately indifferent." JA5346 (emphasis added); *see also* JA5348 ("And so I just want to be clear that although I'm looking at some of this acquitted conduct to put her role based on what she was convicted of in context, I am not going to sentence her based on what she was acquitted of."); JA5348 ("What I'm saying is when I affix her ultimate sentence, I'm not going to rely on acquitted conduct to affix that sentence. I'm only going to use the acquitted conduct to place the false statement conviction in context."); JA5417 ("And, again, I'm not going to sentence her based on

her acquitted conduct."). Rather, the court reiterated that it was only considering Farley's conduct during the day of W.W.'s medical crisis as "relevant conduct as to her false statements." JA5346.

The court sustained Farley's objection to the eight-level enhancement under Section 2B1.1(b)(16)(A) for reckless risk of death or serious bodily injury because, after reviewing this Court's precedent, it "[did] not find that Ms. Farley's offense of conviction, her false statement to [federal investigators], involved the conscious or reckless risk of death or serious bodily injury." JA5356. The court overruled all of Farley's other objections to the PSR's sentencing enhancements. The court first found that the two-level enhancement under Section 3A1.1(b) for vulnerable victim was warranted because W.W. needed medical care, for which he was solely dependent on BOP staff, at the time Farley encountered him, and Farley had understood that W.W. was in a position of such vulnerability. JA5362-5363. Next, the court found that the two-level enhancement under Section 3A1.3 for physical restraint was appropriate because Farley had "overs[een] and was pivotal in the decision that resulted in W.W. being placed on suicide watch," a restraint beyond W.W.'s lawful incarceration. JA5367-5368.

Finally, the court found that the two-level enhancement under Section 3B1.3 for abuse of a position of trust or special skill was justified because Farley's position as a nurse qualified as a special skill, and her position as the only medical provider at the facility when she encountered W.W. qualified as a position of trust. JA5373. In particular, the court emphasized the "considerable deference" inmates and staff afforded to Farley's professional judgment. JA5373. The court thus reasoned that Farley's acquittal on the deliberate-indifference count did not foreclose a finding that she had "take[n] advantage of her position as the sole medical practitioner that evening to facilitate W.W.'s placement on suicide watch, which she later lied about during her interview in the investigation into W.W.'s death." JA5373-5374.

Applying the vulnerable-victim, restraint, and position-of-trust enhancements, the district court calculated a Sentencing Guidelines range of 10 to 16 months' imprisonment. JA5375. The court then granted Farley's Motion for a Downward Variance based on, *inter alia*, her "acquittal of the deliberate indifference charge and the false report charge," as well as her history and characteristics, and sentenced Farley

to six months' active incarceration followed by six months' home detention. JA5418-5422.[6]

SUMMARY OF ARGUMENT

1. Ample evidence supported Covington's Section 242 conviction for deprivation of rights under color of law, and her challenge to the sufficiency of the evidence simply ignores the record. Multiple witnesses testified that they informed Covington that W.W. had a serious medical need and asked for her to evaluate him, and Covington admitted that she took "no action" to address the situation, despite knowing she was required to do so. This was sufficient to prove that Covington willfully deprived W.W. of his right to be free from cruel and unusual punishment under the Eighth Amendment. Ample evidence also established that W.W. suffered significant bodily injuries due to Covington's failures.

Ample evidence also supported Covington's and Farley's false-statements convictions under 18 U.S.C. 1001. On appeal, Covington and

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[6] Covington's PSR calculated a total offense level of 22 and a Sentencing Guidelines range of 41 to 51 months' imprisonment. JA6587. The district court granted Covington's Motion for a Downward Variance and sentenced her to 12 months' active incarceration followed by 12 months' home detention for each count of conviction, with the sentences to be served concurrently. JA5056, JA5308-5310. Covington does not challenge her sentence on appeal.

Farley challenge only the sufficiency of the evidence as to the materiality of their knowingly false statements to the OIG agents, and their arguments are meritless. Because both Covington's and Farley's false statements to OIG agents regarding their actions on the morning of January 9, 2021, related directly to their deliberate indifference toward W.W. and deflected culpability away from them and toward other individuals, a rational jury could have concluded that their statements were material—*i.e.*, capable of influencing OIG's investigation of W.W.'s medical crisis and death.

2. The district court did not abuse its discretion in admitting evidence of W.W.'s time in the suicide-watch cell and excluding evidence of W.W.'s criminal record. Evidence of W.W.'s medical crisis and death following Covington's departure from the facility was highly relevant to proving two requirements for a Section 242 felony conviction—namely that (1) W.W.'s bodily injury or death resulted from Covington's actions; and (2) W.W. had an objectively serious medical condition to which Covington was deliberately indifferent. That the disturbing and graphic video of W.W. in the suicide-watch cell caused damage to Covington's case did not render this probative evidence unfairly prejudicial. In contrast,

evidence of W.W.'s criminal record was properly deemed irrelevant because it did not bear on any element or defense and appellants were wholly unaware of W.W.'s criminal record at the time of the charged conduct. The district court correctly rejected Farley's attempt to shoehorn inadmissible evidence of W.W.'s criminal history into the context of W.W.'s alleged proclivity for malingering, which the court found pertinent and admissible only as reputation or opinion testimony, if considered as the trait of medical dishonesty.

3. The district court did not abuse its discretion in denying Covington's Motion to Sever her trial from that of her properly joined co-defendants under Federal Rule of Criminal Procedure 14. Because the legal basis for the Motion was the alleged irrelevance and unfair prejudice of the evidence of W.W.'s time in the suicide-watch cell, the court's denial of Covington's Motion in Limine to exclude this evidence on those grounds required denial of her Motion to Sever. Covington's contention that the jury may have been unable to compartmentalize the admissible and inadmissible evidence against each defendant, creating the risk that the jury convicted her based on irrelevant and inflammatory

evidence, is factually unsound and fails to allege, let alone establish, the clear prejudice needed for the drastic remedy of severance.

4. The district court did not abuse its discretion in rejecting appellants' Proposed Jury Instructions on proximate cause, hindsight, willfulness, and good faith. A district court's decision not to give a defendant's proposed jury instruction is reversible error only if the proffered instruction: (1) was correct, (2) was not substantially covered by the charge that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense. Covington fails to make this showing. Moreover, the district court's jury instructions on proximate cause, hindsight, and willfulness correctly reflected the precedent of the Supreme Court and this Court, and Covington's reliance on nonbinding, out-of-circuit cases to support appellants' Proposed Instructions is unavailing.

5. The district court did not abuse its discretion in denying Farley's Motion for a New Trial. Evidence from the Section 242 charge for which Farley and her co-defendant were acquitted did not impermissibly spill over and prejudice the jury's consideration of the Section 1001 charge

against Farley because evidence related to W.W.'s death would have been admissible at a trial solely on the Section 1001 false-statements count and did not prejudice her conviction on that count. Additionally, the Government did not knowingly use false testimony to obtain a tainted conviction in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), because the subject testimony of Government witness Dr. Berry was neither false nor material. Finally, cumulative errors do not warrant a new trial because the district court did not commit any errors and, in any event, the jury would have returned a guilty verdict on the Section 1001 count regardless of the alleged errors.

6. Neither the prosecution nor the district court suppressed exculpatory evidence. Covington argues that her due process rights were violated, warranting a new trial, because the district court did not instruct prosecutors to search the BOP email system for potentially exculpatory or impeaching information and did not issue her Rule 17(c) Subpoenas exactly as she initially submitted them. This argument, which Covington did not make below, is most charitably construed as a claim under *Brady v. Maryland*, 373 U.S. 83 (1963) that the prosecution, abetted by the district court, suppressed favorable and material evidence.

The argument fails because Covington cannot show that the undisclosed evidence was favorable or material or that the prosecution had materials and failed to disclose them. Moreover, the district court complied with Supreme Court precedent in modifying the Rule 17(c) Subpoenas.

7. The district court did not procedurally err in calculating Farley's Sentencing Guidelines range. First, the court permissibly considered certain acts and omissions of Farley on the day of W.W.'s medical crisis as relevant conduct in calculating her Sentencing Guidelines range. This conduct was not acquitted conduct that Section 1B1.3 of the Sentencing Guidelines precludes a court from considering because it provided the context for Farley's subsequent false statements, the criminal charge for which she was convicted. Second, the court did not clearly err in applying sentencing enhancements for W.W.'s status as a vulnerable victim, W.W.'s restraint in the suicide-watch cell, and Farley's abuse of her position of trust as a BOP nurse. These enhancements were well supported by the record.

ARGUMENT

I. Sufficient evidence supported Covington's and Farley's convictions.

A. Standard of review

This Court "review[s] de novo the district court's decision to deny a defendant's Rule 29 motion for judgment of acquittal." *United States v. Royal*, 731 F.3d 333, 337 (4th Cir. 2013). Where, as here, the motion is based upon sufficiency of the evidence, this Court "assess[es] the evidence in the light most favorable to the Government, and the jury's verdict must stand unless [the Court] determine[s] that no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Ibid.* Said differently, this Court must uphold a verdict supported by "substantial evidence"—*i.e.*, "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt"—and reverse for insufficient evidence only "where the prosecution's failure is clear." *United States v. Foster*, 507 F.3d 233, 244-245 (4th Cir. 2007) (citation omitted), *abrogated on other grounds by United States v. Banks*, 29 F.4th 168 (4th Cir. 2022). "In evaluating the sufficiency of the evidence, [this Court] do[es] not review the credibility of the witnesses and assume[s]

that the jury resolved all contradictions in the testimony in favor of the government." *Id.* at 245.

B. Sufficient evidence supported the jury's finding that Covington violated 18 U.S.C. 242.

Count 1 charged Covington with deprivation of rights under color of law in violation of 18 U.S.C. 242. JA94-95. To obtain a felony conviction under Section 242, the government must show that (1) the defendant deprived another individual of a constitutional right; (2) the defendant acted willfully; (3) the defendant acted under color of law; and (4) the defendant's actions resulted in the victim's bodily injury. *United States v. Cowden*, 882 F.3d 464, 474 & n.2 (4th Cir. 2018). On appeal, Covington challenges the sufficiency of the Government's evidence on each element except for the color of law requirement. Covington Br. 45-54. However, the evidence was sufficient to establish each element of that offense.

1. Covington deprived W.W. of his constitutional right to be free from cruel and unusual punishment through deliberate indifference to his serious medical needs.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments," U.S. Const. Amend. VIII, which includes "[a] prison official's deliberate indifference to an inmate's serious medical

needs," *Hixson v. Moran*, 1 F.4th 297, 302 (4th Cir. 2021) (citation omitted). Deliberate indifference "requires that a prison official actually kn[e]w of and disregard[ed] an objectively serious condition, medical need, or risk of harm." *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003). This standard has two parts, one objective and the other subjective. First, the inmate must have a serious medical need, "that is, one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hixson*, 1 F.4th at 302 (citation and internal quotation marks omitted). Second, the government must show that "the [prison] official subjectively knew of and disregarded an excessive risk to the inmate's health or safety." *Ibid.*

In this case, the evidence was more than sufficient for the jury to find both prongs met. On the morning of January 9, 2021, five eyewitnesses, including W.W.'s cellmate Herbert Southerland and Correctional Officers Shantae Moody-Moore and Lakeshia Barnes, observed W.W.'s sudden and severe medical symptoms that began during Covington's work shift, including incontinence, incomprehension, incoherence, and the inability to stand or walk without falling. JA1907-

1908, JA1912-1913, JA1915, JA1917, JA1920 (Southerland); JA2097-2099, JA2105 (Moody-Moore); JA2168-2170 (Barnes); JA2028-2030 (Hudson); JA2222-2224 (Pryor); JA4575-4576 (summarizing witness testimony). W.W.'s cellmate found these symptoms concerning enough to repeatedly call the officers for assistance because he hoped W.W. "would go to the doctor" (JA1909, JA1918), and the officers found these symptoms to be sufficiently serious to each report W.W.'s symptoms and his need for medical assistance to a supervisor (JA2100-2109, JA2177-2180). Covington admitted that an inmate showing these symptoms would need to be medically assessed and that, if she had been notified of these symptoms, she would have sent W.W. to the hospital, demonstrating her understanding of the risk these symptoms presented. JA3181-3184, JA3220-3222. But instead of responding to the officers' requests for assistance and seeking medical care for W.W., Covington disregarded the officer reports and left the facility when her work shift ended. JA3145, JA3189-3192. From this evidence, the jury reasonably could have found that W.W.'s medical condition was "so obvious that even a lay person would easily recognize the necessity for a doctor's attention"

and that Covington "knew of and disregarded an excessive risk to [W.W.'s] health or safety." *Hixson*, 1 F.4th at 302.

On appeal, Covington first argues that the Government failed to prove that W.W. had an objectively serious medical need because none of her colleagues acted like W.W.'s issues were "emergent" during her work shift. Covington Br. 45-46. This argument is unavailing. For one thing, video evidence *did* show Correctional Officer Moody-Moore treating W.W.'s condition as "emergent" when she ran to the office where the phone she could use to contact the Lieutenant (*i.e.*, Covington) was located. JA2162-2164.

Further, this Court has made clear that an inmate need not experience "emergent" medical issues to have an "objectively serious" medical condition warranting medical attention. In *Iko v. Shreve*, 535 F.3d 225 (4th Cir. 2008), an inmate collapsed in a medical room after being pepper sprayed several times in his cell. *Id.* at 232. Instead of administering medical treatment, prison officials brought the inmate to another cell, where he eventually died of asphyxia caused in part by the pepper spray. *Id.* at 232-233, 241. In concluding that the inmate had an objectively serious medical need after the pepper-spraying, this Court

observed that it "seems axiomatic" that an inmate who dies of asphyxia "must have suffered some serious medical need that caused his death" and that "even a lay person would infer from [the inmate's] medical room collapse that he was in need of medical attention." *Id.* at 241.

So too here. Starting during Covington's shift and continuing until his death, W.W. repeatedly fell into walls and other objects, resulting in multiple skull fractures and brain bleeding and his eventual death. This tragic outcome makes clear that W.W. suffered a serious medical need that began while Covington was on duty and that caused his injuries and death. Further, five lay witnesses to W.W.'s sudden and severe medical symptoms found them sufficiently serious to require reporting them. Two of those witnesses, Correctional Officers Moody-Moore and Barnes, separately informed Covington of W.W.'s need for medical assistance. If anything, W.W.'s objectively serious medical need during Covington's work shift was more patent than the serious medical need this Court recognized in *Iko*.

No more persuasive is Covington's argument (Br. 46, 49) that she could not, as a lay person, have had actual knowledge of W.W.'s serious medical need because Nurse Sharone Woolridge, a medical professional,

examined W.W. shortly after Covington left the facility and determined that he did not "appear to have any bleeding, bruising, or any obvious injury at this time." In fact, during cross-examination at trial, Woolridge *refuted* this characterization, testifying that the symptoms she observed W.W. exhibiting—an unsteady gait, loss of bladder control, incoherent speech, and sudden change of mental state—established that he *did* have a medical problem, such as a neurological problem. JA3066. Moreover, this Court must assume that the jury resolved all contradictions in the testimony in favor of the Government, *Foster*, 507 F.3d at 245, and, as detailed above, other witnesses testified that Covington was told about W.W.'s medical need. *See* p. 38, *supra*.

2. Covington acted willfully.

Under Section 242, the government also must show that the defendant "willfully" deprived an individual of a constitutional right. To establish this element, "the government must prove that the defendant acted with the particular purpose of violating a protected right made definite by the rule of law or recklessly disregarded the risk that [she] would do so." *Cowden*, 882 F.3d at 474 (alteration, citation, and internal quotation marks omitted). The defendant need not have been "thinking

in constitutional terms," as long as her "aim was not to enforce local law but to deprive a citizen of a right and that right was protected by the Constitution." *Screws v. United States*, 325 U.S. 91, 106 (1945). "Willfulness may be shown by circumstantial evidence, provided that the defendant's purpose reasonably may be inferred from all the connected circumstances." *Cowden*, 882 F.3d at 474.

Here, the evidence was more than sufficient to support the jury's finding that Covington acted willfully for purposes of Section 242. Covington admitted to federal investigators and during cross-examination at trial that she knew BOP policies required her, upon becoming aware of an inmate's need for immediate medical assistance, to respond to the inmate's cell and take certain actions to address that need. JA3179, JA3181-3185, JA3219-3222. She further admitted that an inmate demonstrating W.W.'s symptoms would need a medical evaluation and that, had she known about those symptoms, she would have sent W.W. to the hospital. JA3181-3184, JA3220-3222. Notwithstanding these facts, Covington failed to take the required actions after learning of W.W.'s sudden and severe medical symptoms from Correctional Officers Moody-Moore and Barnes; in fact, she

admitted that she took "no action" whatsoever to assist W.W. JA3189-3192, JA4576-4577 (summarizing testimony). Instead, she asked Moody-Moore to enter a false record reflecting that she had done rounds in the facility when she had not. JA2111-2112, JA4576-4577 (summarizing testimony). She subsequently lied to a federal agent investigating W.W.'s death about what she knew about W.W.'s condition during her work shift. JA2544-2545, JA2554-2558. Based on this evidence, the jury could have concluded that Covington, while acting under color of law as a BOP Lieutenant, "acted with the particular purpose" of violating the right to be free from cruel and unusual punishment or "recklessly disregarded the risk that [she] would do so." *Cowden*, 882 F.3d at 474 (alteration, citation, and internal quotation marks omitted).

Covington argues that the Government failed to prove willfulness under Section 242 because it did not present any evidence that she knew or previously interacted with W.W., much less that she "bore him ill will" or "acted with the intent to violate his federal civil rights." Covington Br. 46-47. This challenge fails. Willfulness under Section 242 does not require that the defendant and victim previously knew each other. *See Cowden*, 882 F.3d at 468-470, 474 (upholding willfulness determination

where the defendant officer assaulted a restrained arrestee at the station). Moreover, under the precedent of the Supreme Court and this Court, willfulness also does not require that the defendant harbored "ill will" toward the victim or was thinking in constitutional terms, only that she possessed "the specific intent to do something the law or [C]onstitution forbids." *See* pp. 80-82, *infra*. On this record, the jury reasonably could have found that the Government proved that here.

3. Covington's actions resulted in W.W.'s bodily injury.

Section 242 provides that a conviction is punishable as a felony "if bodily injury results from" the violation. 18 U.S.C. 242. This Court defines "bodily injury" for the purposes of this element as "(A) a cut, abrasion, bruise, burn, or disfigurement; (B) physical pain; (C) illness; (D) impairment of [a/the] function of a bodily member, organ, or mental faculty; or (E) any other injury to the body, no matter how temporary." *United States v. Perkins*, 470 F.3d 150, 161 (4th Cir. 2006) (citation omitted). Although this Court has not defined the phrase "results from" in this context, the holdings of the Supreme Court and this Court interpreting identical language from 21 U.S.C. 841(b)(1)(C) strongly suggest that a defendant's actions must be a "but-for" cause of the

victim's bodily injury for the felony enhancement to apply. *See* pp. 76-79, *infra*.

The evidence, as discussed above, was more than sufficient for the jury to find that Covington's inaction was a but-for cause of W.W.'s bodily injury. During Covington's work shift, W.W. experienced sudden and severe medical symptoms that caused two correctional officers to report to Covington his need for immediate medical assistance. JA2100-2109, JA2177-2180. Rather than seek medical care for W.W. and respond to the officers' requests for assistance as BOP policies required, Covington disregarded the officer reports and left the facility when her work shift ended. JA3145, JA3189-3192. W.W. was then transferred into the suicide-watch cell, where he sustained multiple skull fractures and brain bleeding after repeatedly falling into walls and other objects—indisputably bodily injury under *Perkins*. From this evidence and Dr. Berry's testimony (*see* JA1644-1648) that W.W. could have lived and his injuries could have been prevented had he been hospitalized and examined at any point during his medical crisis, the jury reasonably could have found that Covington's inaction was a but-for cause of W.W.'s bodily injury.

On appeal, Covington presses three arguments, none of which has any merit. First, Covington argues that the Government failed to present any evidence that W.W. suffered bodily injury during her work shift, precluding the jury's conclusion that her conduct caused this injury. Covington Br. 46. This argument is factually incorrect. W.W. repeatedly fell in his cell while Covington was on duty according to multiple Government witnesses, including Correctional Officer Moody-Moore, who testified that she saw W.W. fall and hit his head, which she then reported to Covington. JA2102, JA2105, JA2108, JA4585 (summarizing testimony). The jury could have credited this testimony as sufficient evidence that W.W. sustained bodily injury during Covington's work shift. The Government was not further required, as Covington suggests (Br. 46), to present video or photographic evidence of W.W.'s condition during her shift or to refute Nurse Woolridge's alleged finding (which, as noted above, Woolridge herself disputed) that W.W. did not "appear to have any bleeding, bruising, or any obvious injury" (JA5457) shortly after Covington left the facility. *See Foster*, 507 F.3d at 245.

Even if W.W. sustained bodily injury only after Covington's work shift ended, Covington's argument still fails because it is legally

incorrect. She cites no case law, and the Government is aware of none, supporting her contention that her departure from the facility broke the but-for causal chain and absolved her of responsibility for failing to prevent W.W.'s subsequent bodily injury. Instead, to hold Covington liable under the but-for standard, the jury needed only to find that W.W.'s bodily injury "would not have occurred in the absence of" her inaction. *Burrage v. United States*, 571 U.S. 204, 211 (2014) (citation omitted). As explained above, the jury could reasonably have made this finding—*e.g.*, by finding that W.W. would not have continued falling into walls and other surfaces in the prison if Covington had him sent to the hospital in a timely and responsible manner upon learning of his serious medical problems.

Next, Covington argues that the Government's causation theory fails because BOP policy only permits an inmate to be transported to the hospital for "unexpected life-threatening medical situations," which did not apply to W.W. here. Covington Br. 47-48 (citation omitted). Again, Covington is wrong. Even accepting this argument at face value, the autopsy demonstrates that W.W. *was* facing an unexpected life-threatening medical situation. JA5827. Further, Covington admitted

that if she had been notified of W.W.'s symptoms, she would have sent him to the hospital (JA3181-3184, JA3220-3222), thereby refuting her own argument that "the circumstances during Covington's shift did not warrant sending W.W. to the hospital" (Covington Br. 48). And the record refutes her contention (Br. 48) that "the [G]overnment's entire theory was that Covington caused W.W. bodily injury because she did not send him out to the hospital." *See* JA4081 (referencing fall during Covington's shift in closing argument as evidence of bodily injury).

Covington also acknowledged at trial (JA3179, JA3182-3184) that BOP policy requires an Operations Lieutenant notified of an inmate's need for immediate medical assistance to contact the on-call physician, who would determine whether the inmate should be sent to the hospital. *See also* JA4586 (summarizing evidence describing policy). Covington did not make that call here upon learning from Correctional Officers Moody-Moore and Barnes of W.W.'s need for immediate medical attention, and it is irrelevant that she could *also* send W.W. to the hospital for a life-threatening emergency without consulting a physician. Covington's inaction in this respect was one of the several ways she exhibited deliberate indifference toward W.W.'s serious medical need (*see* JA4586

n.4), and the jury reasonably could have found that it was a but-for cause of W.W.'s bodily injury.

Finally, Covington argues that she should not be "blamed" for not sending W.W. to the hospital because several other uncharged BOP employees also failed to help W.W. Covington Br. 49. That other officials also exhibited indifference to W.W.'s plight does not absolve Covington of her deliberate indifference. Covington's complaint about the Government's charging decisions provides no legal basis to disturb the jury's finding on causation. *See United States v. Benson*, 957 F.3d 218, 236-237 (4th Cir. 2020) (concluding that "non-prosecution decisions are irrelevant because they often take into consideration the availability of prosecutorial resources, alternative priorities, the expectation of prosecution by other authorities, or any number of other valid discretionary reasons" (citation and internal quotation marks omitted)). Moreover, that other BOP employees may have borne *some* responsibility for W.W.'s bodily injury by not sounding the alarm does not affect Covington's culpability for such injury given her responsibility for procuring medical care for W.W. and her failure to do so. *See Burrage*, 571 U.S. at 211 (concluding that the but-for standard is satisfied "if the

predicate act combines with other factors to produce the result, so long as the other factors alone would not have done so"). Under the but-for standard, Covington "cannot avoid liability just by citing some *other* factor that contributed to" W.W.'s bodily injury. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020).

C. Sufficient evidence supported the jury's finding that Covington's and Farley's false statements to federal agents were material to the agents' investigation of W.W.'s death under Section 1001.

Counts 5 and 6 charged Farley and Covington, respectively, with false statements in violation of 18 U.S.C. 1001. JA97-98. To obtain a conviction under Section 1001, the government must prove beyond a reasonable doubt that: (1) the defendant made a false statement in a matter involving a governmental agency; (2) the defendant acted knowingly or willfully; and (3) the false statement was material to a matter within the jurisdiction of the agency. *See United States v. Legins*, 34 F.4th 304, 313 (4th Cir. 2022). Both Covington and Farley challenge the sufficiency of the Government's evidence only as to the materiality element. They argue that their false statements in their respective 2023 interviews with OIG agents were not material because they did not

influence, and were not capable of influencing, the decision or action of the agency. Covington Br. 49-54; Farley Br. 45-50.

As appellants correctly recognize, a false statement is material for purposes of Section 1001 "if it has a natural tendency to influence, or is capable of influencing, the decision-making body to which it was addressed." *United States v. Smith*, 54 F.4th 755, 769 (4th Cir. 2022) (citation omitted). "This inquiry is ultimately an objective test" and it is "irrelevant whether the false statement *actually influenced* the [agency's] decision-making process." *Id.* at 769 (citations and internal quotation marks omitted). Moreover, "[a] false statement's capacity to influence the [agency] must be measured at the point in time that the statement was uttered." *United States v. Sarihifard*, 155 F.3d 301, 307 (4th Cir. 1998).

1. Covington's false statements to federal agents were capable of influencing the investigation of W.W.'s death.

The evidence was more than sufficient to establish that Covington's false statements to the OIG agents regarding her actions on the morning of January 9, 2021, were "capable of influencing" the OIG investigation of W.W.'s medical crisis and death. In her interview, Covington said that Correctional Officer Moody-Moore never informed her of W.W.'s

symptoms, denied asking Moody-Moore to falsify a record regarding her rounds, and denied that any other officer had talked to her about W.W. JA2544-2545, JA2553-2555. These statements, which Covington repeated during her trial testimony (JA3207-3210, JA3214-3218, JA3223-3225, JA3231), were contradicted by the trial testimony of Correctional Officers Moody-Moore and Barnes (*see* JA2100-2112, JA2174-2180, JA2216-2217, JA2687-2688, JA4576-4577 (summarizing testimony)), who the jury reasonably could have believed over Covington. *See Foster*, 507 F.3d at 245. Because Covington's false statements related directly to her deliberate indifference toward W.W. and deflected culpability away from her, a rational jury could reasonably have found that these statements "if believed, were capable of influencing the direction of the investigation" by causing the OIG agents "to re-direct their investigation to another suspect." *Smith*, 54 F.4th at 769 (citation omitted).

On appeal, Covington argues that the Government failed to satisfy its burden because prosecutors did not expressly ask Senior Special Agent Anya Whitney at trial whether Covington's false statements impacted the agent's decisions or actions. Covington Br. 50-51. This

argument misses the mark. The Government was not required to prove that Covington's false statements *actually* influenced the investigation, only that they were *capable* of doing so. *See Smith*, 54 F.4th at 769. Covington cites no case law, and the Government is aware of none, requiring prosecutors to ask this particular question, and to receive an affirmative answer, to establish this element or any other element. Instead, false statements "aimed at misdirecting agents and their investigation" satisfy Section 1001's materiality requirement "even if they miss spectacularly or stand absolutely no chance of succeeding." *Id.* at 772 (citation omitted). Thus, the jury reasonably could have found that Covington's false statements, in which she denied knowing that there was any problem with the deceased inmate at the center of OIG's investigation, were material.

Covington's related contention (Br. 51-54) that the Government failed to introduce any factual evidence of materiality from which the jury could find a Section 1001 violation is equally unavailing. As Covington concedes (Br. 51), a jury may infer the materiality of false statements from evidence at trial. In addition to the testimony of Correctional Officers Moody-Moore and Barnes, the Government elicited testimony

from Senior Special Agent Whitney stating that she was investigating the circumstances of W.W.'s death and establishing that Covington's statements in her interview, in which Covington denied any wrongdoing, were inconsistent with the above witness testimony. JA2540-2541, JA2544-2545, JA2553-2556, JA3240-3241, JA5090-5091 (summarizing testimony). Because this circumstantial evidence suggested that Covington's false statements were "aimed at misdirecting agents and their investigation," *Smith*, 54 F.4th at 772 (citation omitted), it was more than sufficient for the jury to infer the materiality of those statements. *See United States v. Fondren*, 417 F. App'x 327, 335-336 (4th Cir. 2011); *cf. Smith*, 54 F.4th at 769 (concluding that the government "presented enough direct and circumstantial evidence for a reasonable jury to conclude that Smith acted with the requisite intent" to satisfy Section 1001's requirement that he made the false statements knowingly or willfully).

2. Farley's false statements to federal agents were capable of influencing the investigation of W.W.'s death.

The evidence was also more than sufficient to establish that Farley's false statements to the OIG agents regarding her actions on

January 9, 2021, were "capable of influencing" the OIG investigation of W.W.'s medical crisis and death. In her interview, Farley claimed that she called Dr. Ericka Young to discuss W.W.'s symptoms and that Dr. Young discouraged her from sending W.W. to the hospital because he did not have a medical issue. JA2571-2572, JA2579-2580, JA3736-3740 (testimony on what she told investigators). At trial, Farley reversed course and admitted that she did not contact Dr. Young or any other physician about W.W. despite being required by BOP policy and Nursing Protocols to do so. JA3704-3706, JA3753-3754. Because Farley's false statements related directly to her deliberate indifference toward W.W. and deflected culpability away from her, the jury could reasonably have found that these statements "if believed, were capable of influencing the direction of the investigation" by causing the OIG agents "to re-direct their investigation to another suspect," namely Dr. Young. *Smith*, 54 F.4th at 769 (citations and internal quotation marks omitted).

Despite her trial admission, Farley argues on appeal that her false statements regarding her claimed conversation with Dr. Young did not actually influence the Government's investigation because it possessed telephone records at the time of the interview showing that she never

called Young. Farley Br. 46, 48-50. As Farley readily concedes (Br. 49 n.4), however, this Court has set forth an objective test for materiality that does not require the Government to prove that false statements *actually* influenced an agency decision, only that they were *capable* of doing so. *See Smith*, 54 F.4th at 769. As explained above, the jury could reasonably have found that Farley's false statements satisfied this standard. "[T]hat the [OIG agents] already knew the answers to the questions they asked [her] makes no difference to [this Court's] inquiry." *Id.* at 769-770 (citation and internal quotation marks omitted).

II. The district court did not abuse its discretion in admitting evidence of W.W.'s time in the suicide-watch cell and excluding evidence of W.W.'s prior criminal conviction.

A. Standard of review

This Court reviews a district court's evidentiary ruling for abuse of discretion. *United States v. Medford*, 661 F.3d 746, 751 (4th Cir. 2011). "Under this standard, the appellate court affords the evidentiary ruling substantial deference, and will not overturn the ruling unless the decision was arbitrary and irrational." *Ibid.* (citation and internal quotation marks omitted). This broad leeway recognizes that "[j]udgments of evidentiary relevance and prejudice are fundamentally a

matter of trial management." *United States v. Benkahla*, 530 F.3d 300, 309 (4th Cir. 2008).

B. Evidence of W.W.'s time in the suicide-watch cell was relevant to the Section 242 charge against Covington under Rules 401 and 402 and not unduly prejudicial under Rule 403.

Federal Rule of Evidence 402 provides that "[r]elevant evidence," defined as evidence that "has any tendency to make a fact [of consequence to the determination of the case] more or less probable than it would be without the evidence," Fed. R. Evid. 401, is admissible except as otherwise prohibited by the Constitution, federal statute, or the Federal Rules of Evidence. Fed. R. Evid. 402. Relevant evidence is subject to exclusion under Federal Rule of Evidence 403, however, when its probative value is "substantially outweighed" by, *inter alia*, the "danger of . . . unfair prejudice." Fed. R. Evid. 403. Exclusion of relevant evidence under Rule 403 is required only "where the trial judge believes that there is a genuine risk that the emotions of the jury will be excited to irrational behavior, and that this risk is disproportionate to the probative value of the offered evidence." *United States v. Freitekh*, 114 F.4th 292, 316 (4th Cir. 2024) (citation omitted).

In this case, the district court acted well within its discretion in concluding that evidence of W.W.'s time in the suicide-watch cell—namely, surveillance footage and other evidence documenting the last hours of W.W.'s life—was relevant to the Section 242 charge against Covington, thus warranting denial of her Motion in Limine to exclude this evidence. JA441-443. The Government charged Covington with a felony, which required it to show that W.W.'s bodily injury or death resulted from her actions. *See United States v. Cowden*, 882 F.3d 464, 474 & n.2 (4th Cir. 2018). Evidence relating to W.W.'s bodily injury and death was therefore essential to the Government's proof on this element. Indeed, it is not clear, and Covington does not attempt to explain, how the Government could have proven its case without such evidence. As the district court explained, this "evidence . . . could be seen to furnish the requisite necessary link in the (alleged) causal chain from the Defendants' alleged actions or omissions to W.W.'s ending up in the suicide[-]watch cell where he fell and died." JA442.

Evidence relating to W.W.'s time in the suicide-watch cell was also relevant to proving that he had an "objectively serious" medical condition, a sub-element of the requirement for Section 242 liability that Covington

was deliberately indifferent to W.W.'s serious medical needs in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. In the suicide-watch cell, W.W. sustained multiple skull fractures and brain bleeding and eventually died of blunt force trauma to his head due to repeatedly falling into walls and other objects—the *exact* symptoms he displayed in his cell while Covington was on duty. *See* p. 40, *supra*. Accordingly, the suicide-watch evidence had some tendency to prove the consequential fact that W.W.'s medical condition while Covington was at the facility was "so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hixson v. Moran*, 1 F.4th 297, 302 (4th Cir. 2021).

Covington argues that the suicide-watch evidence is irrelevant because the failure of her BOP colleagues to provide W.W. with adequate medical care in the hours after she left the facility broke the causal chain connecting her acts and W.W.'s subsequent injuries and death. Covington Br. 22-26. This argument fails. Because the jury could have concluded that Covington's inaction was a but-for cause of W.W.'s subsequent injuries in the suicide-watch cell despite the presence of other causes, *see* pp. 44-50, *supra*, her absence from the facility when W.W. was placed in

the cell does not affect this evidence's relevance. Indeed, taken to its logical conclusion, Covington's argument would prohibit the Government from offering in any death-resulting case, whether under Section 242 or another statute—*e.g.*, 21 U.S.C. 841(b)(1)(A) (criminalizing drug distribution resulting in death)—evidence of the victim's death to prove any of the relevant elements so long as the defendant left the scene before the victim expired. That cannot be the law.

The district court also acted well within its discretion in determining that the probative value of the evidence relating to W.W.'s time in the suicide-watch cell was not substantially outweighed by the danger of unfair prejudice. JA444-446. To be sure, evidence of W.W.'s final hours of life, particularly the video of his time in the suicide-watch cell, was graphic and disturbing. But where "undoubtedly gruesome" evidence is relevant and probative, as it was here, this Court has declined to require the exclusion of such evidence as unfairly prejudicial. *See United States v. Contreras*, 149 F.4th 349, 365 (4th Cir. 2025) (rejecting Rule 403 challenge to admission of videos of a victim's murder and autopsy photos). Because "[e]vidence that is highly probative invariably will be prejudicial to the defense," *United States v. Grimmond*, 137 F.3d

823, 833 (4th Cir. 1998), "[t]he mere fact that the evidence damage[s] [Covington's] case is not enough to hold that the evidence was unfairly prejudicial such that its admission was an abuse of discretion," *Freitekh*, 114 F.4th at 316 (alterations, citation, and internal quotation marks omitted).

Covington contends that the district court failed to weigh the marginal relevance of the "extremely disturbing" video against the video's potential to inflame the jury in view of the entire record, which establishes she did not participate in putting W.W. in the cell and could not have foreseen the mistreatment of W.W. by her BOP colleagues after her departure. Covington Br. 25-26. In fact, the court already considered this argument in rejecting Covington's Rule 403 challenge. The court observed that appellants "will have a full opportunity to place the suicide-watch evidence into the proper context—i.e., to explain that they were not on the premises during the entirety of the video and collection of other evidence—and the jury will take that into account in determining liability." JA446. The jury's acquittal of Covington on Section 242's death-resulting element and its acquittal of Farley on the Section 242 charge altogether suggests that the jury carefully considered appellants'

arguments that they should not be held responsible for events that occurred after they left the facility. Indeed, the jury's determination that *none* of the defendants caused W.W.'s death belies Covington's contention (Br. 26) that the inflammatory video "irrevocably affected the jury[,] who wanted to *hold someone accountable* for W.W.'s death."

Contrary to Covington's suggestion (Br. 25), the court had no obligation to consider "potential evidentiary alternatives" to the suicide-watch video. Covington fails to propose any alternatives that would have the same probative value as the video. Moreover, even if the Government "could have relied on other . . . evidence to meet its burden of proof, Rule 403 does not bar powerful, or even prejudicial evidence." *Contreras*, 149 F.4th at 365 (citation and internal quotation marks omitted). Instead, "unfair prejudice requires a showing of a genuine risk that the emotions of the jury will be excited to irrational behavior, and that this risk is disproportionate to the probative value of the offered evidence." *Ibid.* (citation and internal quotation marks omitted). The court acted well within its discretion in concluding that such unfair prejudice did not exist here, particularly because "[t]he video was not duplicative of other evidence the Government presented at trial nor did the Government

introduce the video evidence solely for its shock value." *Ibid.* Further, the jury was properly instructed to consider each defendant's guilt separately. JA1312.

C. Evidence of W.W.'s criminal record was improper character evidence under Rule 404 and unduly prejudicial under Rule 403.

Federal Rule of Evidence 404 prohibits admission of "[e]vidence of a person's character or character trait . . . to prove that on a particular occasion the person acted in accordance with the character or trait." Fed. R. Evid. 404(a). Rule 404 provides an exception to this general bar on propensity evidence when, in a criminal case, a defendant seeks to "offer evidence of an alleged victim's pertinent trait." Fed. R. Evid. 404(a)(2)(B). "Pertinent" in this context means the same as "relevant" in Rule 401. *United States v. Angelini*, 678 F.2d 380, 381 (1st Cir. 1982) (citation omitted); *United States v. Hewitt*, 634 F.2d 277, 279 (5th Cir. 1981). In other words, the evidence of the victim's character trait must have a "tendency to make a fact [of consequence to the determination of the case] more or less probable than it would be without the evidence." Fed. R. Evid. 401. Moreover, even if pertinent, character evidence is subject to exclusion under Rule 403 if its probative value is "substantially

outweighed" by, *inter alia*, the "danger of . . . unfair prejudice." Fed. R. Evid. 403.

Rule 405 establishes how a party can introduce admissible evidence of a person's character or character trait. The Rule provides that such evidence "may be proved by testimony about the person's reputation or by testimony in the form of an opinion." Fed. R. Evid. 405(a). Moreover, "[w]hen a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct." Fed. R. Evid. 405(b).

The district court acted well within its discretion in excluding evidence of W.W.'s conviction for production of child pornography as improper character evidence under Rule 404 that does not fall under the pertinent-trait exception. JA6186-6191. As an initial matter, W.W.'s criminal history is a set of past facts, not a "character trait," which various courts have defined as "elements of one's disposition, 'such as honesty, temperance, or peacefulness.'" *United States v. West*, 670 F.2d 675, 682 (7th Cir. 1982) (quoting 1 Robert P. Mosteller, McCormick on Evidence § 195 (9th ed. 2025)), *overruled on other grounds by United States v. Green*, 258 F.3d 683 (7th Cir. 2001); *accord United States v.*

Nixon, 694 F.3d 623, 636 (6th Cir. 2012) (citing *West*, 670 F.2d at 682); *United States v. Cortez*, 935 F.2d 135, 138 n.3 (8th Cir. 1991) (same). Even if W.W.'s criminal history were construed as a trait of dangerousness, the district court correctly concluded that this trait (of which Farley was wholly unaware at the time of the charged conduct) was not pertinent because it did not have any tendency to make it less likely that Farley's conduct satisfied Section 242's requirements: that she acted under color of law; that she acted willfully; that she knew W.W. had a serious medical need and that her actions were insufficient to address that need; and that her actions resulted in W.W.'s bodily injury and death. JA6188-6191 & n.5; *see* Fed. R. Evid. 401.

The district court also acted well within its discretion in rejecting Farley's subsequent attempt to have evidence of W.W.'s criminal history admitted as evidence related to his alleged malingering, which the court found pertinent and admissible as reputation or opinion testimony if considered as the "trait" of "medical dishonesty." JA6192-6194. In moving for reconsideration of the district court's order excluding evidence of W.W.'s criminal history, Farley argued that W.W. faked self-harm behaviors to be placed in the suicide-watch cell—*i.e.*, malingered—

because he feared that other inmates were aware of the sexual nature of his offense and would harm him. JA6655-6656, JA6661-6664. The court correctly rejected (JA6937-6938) this attempt to "shoehorn[]" inadmissible evidence of W.W.'s criminal history "into the context of W.W.'s alleged proclivity for malingering." *See United States v. Ayoub*, 701 F. App'x 427, 434 (6th Cir. 2017) (affirming the district court's rejection of appellants' attempt to re-characterize allegations regarding the credibility of a government witness, which is properly analyzed under Rule 608, as admissible character evidence under Rule 404(b)).

On appeal, Farley focuses on the district court's second reason for exclusion, arguing that the court should have admitted evidence of W.W.'s criminal past as "relevant and probative of allegations of malingering." Farley Br. 50. She cites numerous references to malingering in W.W.'s mental health records and claims that "the reason for [W.W.'s] malingering"—that, on some occasions, he felt unsafe at the facility because of his status as a sex offender—should have been admissible through cross-examination of various Government witnesses. Farley Br. 52-53.

Farley's argument is meritless. She does not contest the court's conclusion (JA6193 n.8) that evidence of W.W.'s alleged trait of medical dishonesty was not an "essential element" of any charge or defense, and therefore its admission was limited to opinion or reputation testimony. *See* Fed. R. Evid. 405; *United States v. Piche*, 981 F.2d 706, 712-713 (4th Cir. 1992) (concluding that the district court "was well within its discretion" in excluding testimony about specific instances of conduct where character trait was not an essential element), *overruling on other grounds recognized by United States v. Ziadeh*, 104 F. App'x 869, 876 (4th Cir. 2004). Accordingly, the court properly prevented Farley from introducing specific instances in which W.W. stated that he malingered out of fear due to his status as a sex offender. *See, e.g.*, Farley Br. 52 (citing JA6763); *see also* JA6657-6660.

Farley also contends (Br. 53-54) that the probative value of W.W.'s criminal history—namely, that it showed why W.W. was malingering—substantially outweighed its prejudice because W.W.'s alleged malingering "played a very significant role" in her defense. This argument is equally unavailing. Again, Rule 405(a) expressly precludes evidence of specific instances of conduct, and it does not contain an

exception for when evidence is "very significant." In its Rule 403 analysis, the court adhered to the Federal Rules of Evidence, *permitting* Farley to introduce evidence that W.W. was a malingerer so long as it was limited to opinion or reputation testimony in accordance with Rule 405 and did not involve specific instances relating to W.W.'s criminal history. JA6193-6194 & n.8. It was not an abuse of discretion to allow Farley to introduce evidence relating to the elements of the crimes with which she was charged while precluding her from introducing irrelevant, hearsay evidence that would invite the jury to base its verdict on the deceased victim's status as a sex offender, rather than on the law and evidence.

In any event, the copious testimony and argument regarding W.W.'s alleged malingering that *was* admitted rendered harmless any error by the district court in excluding evidence of W.W.'s criminal history. *See United States v. Cloud*, 680 F.3d 396, 401 (4th Cir. 2012). The jury heard testimony that inmates malinger to "gain" something, such as getting out of their cell or going to suicide watch. *See, e.g.*, JA2424 ("Sometimes they'll fake medical conditions, right?" "Yes." "Because often they want to get out of their cell, right?" "Yes." "Oftentimes they want to go to the suicide watch. True?" "Yes."); JA2235, JA2423, JA2472. It also

heard opinion testimony that W.W. was a malingerer and had a reputation for malingering. *See, e.g.*, JA3622, JA3653. And Farley argued that W.W. was malingering the night he died. JA4190-4191.

Accordingly, additional evidence about *why* W.W. was a malingerer or was malingering—*i.e.*, that sometimes W.W. wanted to get out of his cell or go to suicide watch *because* he felt unsafe due to his conviction—would not have "tipped the needle in the jury's deliberations." *United States v. Nsahlai*, 121 F.4th 1052, 1062 (4th Cir. 2024). Instead, it would have invited nullification. Thus, the district court properly excluded this highly unfairly prejudicial, irrelevant information.

Farley also claims that evidence of W.W.'s criminal past was "pertinent to the considerations of the safety of the community" because "bringing a sex offender such as W.W. to the hospital created potential dangers to children at the hospital." Farley Br. 50, 54. As an initial matter, Farley waived this argument by failing to develop it adequately on appeal. *See Barrett v. PAE Gov't Servs., Inc.*, 975 F.3d 416, 433 (4th Cir. 2020). To receive appellate review, an appellant's argument must contain her "contentions and the reasons for them, with citations to the authorities and parts of the record on which [she] relies." Fed. R. App. P.

28(a)(8)(A). Farley's single paragraph at the end of this argument section, bereft of any case citation and containing one record citation to the district court's decision she challenges, constitutes a "passing shot" that falls well short of this mandate. *Real Time Med. Sys., Inc. v. PointClickCare Techs., Inc.*, 131 F.4th 205, 226 (4th Cir. 2025) (citation omitted).

Regardless, this argument fails on the merits. As an initial matter, Farley did not present any evidence at trial that she knew of W.W.'s status as a sex offender, let alone that it influenced her decision not to send him to the hospital. Nor did she present any evidence that BOP policy or practice would have supported this approach. Of course, BOP houses numerous inmates who pose a danger to the public; this does not absolve BOP, or BOP officials, of the obligation to provide these inmates with necessary healthcare.

Even if there were any evidence to support Farley's post-hoc justification, as noted above, the district court found that evidence of the danger that W.W. allegedly posed was not pertinent because it did not bear on any elements of the Section 242 charge. In other words, fear that an inmate might present a danger to people at the hospital was not a

defense to not sending him there and, instead, letting him die in a cell. Farley offers no argument to dispute the district court's legally correct conclusion. Moreover, because Farley was *acquitted* on the Section 242 charge, any error on this front would be harmless. *See United States v. Wooten*, 688 F.2d 941, 947 (4th Cir. 1982).

III. The district court did not abuse its discretion in denying Covington's Motion to Sever.

A. Standard of review

This Court reviews a district court's denial of a motion to sever a joint trial under Federal Rule of Criminal Procedure 14 for abuse of discretion. *See United States v. Contreras*, 149 F.4th 349, 370 (4th Cir. 2025).

B. Covington failed to show the clear prejudice necessary for severance under Federal Rule of Criminal Procedure 14.

Under Rule 14, a district court may sever the trials of co-defendants properly joined in an indictment under Federal Rule of Criminal Procedure 8(b) if joinder "appears to prejudice a defendant or the government." Fed. R. Crim. P. 14(a). Because "[t]here is a preference in the federal system for joint trials of defendants who are indicted together," *Zafiro v. United States*, 506 U.S. 534, 537 (1993), "prejudice

exists only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence," *Contreras*, 149 F.4th at 370 (citation and internal quotation marks omitted). Severance is "rarely granted" when two or more defendants have been properly joined, and this Court "will not reverse a denial of a motion to sever absent a showing of clear prejudice." *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012).[7]

The district court acted well within its discretion in denying Covington's Motion to Sever. JA455-457. As the court correctly recognized, "the legal predicate on which [Covington's] severance argument [wa]s built" was the alleged irrelevance and unfair prejudice of the evidence of W.W.'s time in the suicide-watch cell, and thus the court's denial of Covington's Motion in Limine to exclude that evidence required denial of her Motion to Sever. JA456-457. On appeal, Covington

[7] Under Federal Rule of Criminal Procedure 8(b), an indictment may charge two or more defendants together if they "are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). Covington does not challenge joinder on appeal.

reiterates her argument that this evidence was irrelevant but sets forth no additional support for her contention. Covington Br. 28. This argument fails for the reasons set forth above. *See* pp. 57-63, *supra*.

Covington also argues that severance was warranted because the jury may have been unable to compartmentalize the admissible and inadmissible evidence against each defendant, creating the risk that the jury convicted her based on irrelevant and inflammatory evidence. Covington Br. 28-30. This argument is unavailing because it fails to allege, let alone establish, the "clear prejudice," *Dinkins*, 691 F.3d at 368, necessary for the "drastic measure[]" of severance, *Zafiro*, 506 U.S. at 539. Even if evidence of the last hours of W.W.'s life was admissible only against her co-defendants, Covington's claim of prejudice from the "unfair spillover effect" of such evidence requires an "exceptional case" not present here. *United States v. Oloyede*, 933 F.3d 302, 312 (4th Cir. 2019) (citation omitted). She "is not entitled to severance [merely] because the evidence against [her] is not as strong as that against [her co-defendants] or because separate trials would more likely result in acquittal." *Contreras*, 149 F.4th at 371 (citation and internal quotation marks omitted). Said differently, Covington's "speculative and conclusory

allegations regarding *possible* prejudice do not satisfy [her] burden" of demonstrating *clear* prejudice. *Ibid.* (emphasis added).

In any event, any concern about prejudicial spillover from the evidence at issue was mitigated by the district court's express instruction to the jury "to consider each count separately." JA5116; *see Zafiro*, 506 U.S. at 539 ("[L]ess drastic measures [than severance], such as limiting instructions, often will suffice to cure any risk of prejudice."). This Court must presume that the jury followed that instruction, *see United States v. Brewbaker*, 87 F.4th 563, 584 (4th Cir. 2023), and Covington does not suggest otherwise. Moreover, as the district court correctly observed, the defendants had "a full opportunity to place the . . . evidence in[] the proper context." JA446. Indeed, at trial, Covington argued at length that she should not be held responsible for events that occurred after she left the facility (*see, e.g.*, JA4095-4096, JA4123-4134, JA4142, JA4154), and the jury's acquittal of her on Section 242's death-resulting element suggests that the jury carefully considered that argument. In sum, the record fails to demonstrate that Covington suffered *any* prejudice from a joint trial with her co-defendants, much less the clear prejudice necessary for severance.

IV. The district court did not abuse its discretion in rejecting appellants' Proposed Jury Instructions on proximate cause, hindsight, willfulness, and good faith.

A. Standard of review

This Court reviews a decision not to give a defendant's proposed jury instruction for abuse of discretion. *United States v. Hager*, 721 F.3d 167, 184 (4th Cir. 2013).[8]

B. Covington failed to identify an error in the court's Jury Instructions.

A district court's decision not to give a defendant's proposed jury instruction "amounts to reversible error only if the proffered instruction: (1) was correct, (2) was not substantially covered by the charge that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense." *Hager*, 721 F.3d at 184. "Even if these factors are met, however, failure to give the defendant's requested instruction is not reversible error unless the defendant can show that the record as a whole

[8] Because Covington styled her argument as a challenge to the district court's denial of appellants' Proposed Jury Instructions, not as a challenge to the legal correctness of the court's actual instructions, this Court's review is for abuse of discretion, not de novo as she claims. *See* Covington Br. 30. In any event, her argument fails regardless of the standard of review.

demonstrates prejudice." *Ibid.* Because the district court's Jury Instructions on proximate cause, hindsight, willfulness, and good faith reflected the precedent of the Supreme Court and this Court, and Covington's reliance on nonbinding, out-of-circuit cases is unavailing, the court did not abuse its discretion or otherwise commit reversible error in rejecting appellants' Proposed Jury Instructions.

1. No proximate-cause instruction was required.

First, as to the requirement that bodily injury or death "results from" the Section 242 violation, the district court properly rejected appellants' Proposed Instruction that the Government must prove beyond a reasonable doubt that "W.W.'s death or bodily injury was a proximate result of the defendant's conduct, in the sense of being a natural and foreseeable result of that conduct." JA1173. Instead, the court correctly instructed the jury that the Government was required to prove beyond a reasonable doubt that, "*but for* the Defendant's deliberate indifference to [W.W.]'s serious medical needs, [W.W.] would not have suffered injury or died." JA1343 (emphasis added). As the district court explained (JA5083), decisions of the Supreme Court and this Court holding that analogous "results from" language in 21 U.S.C.

841(b)(1)(C)—which provides for heightened penalties when a death "results from" the defendant's distribution of drugs—required a showing of but-for causation "strongly support[s] application of a but-for standard in the § 242 context." *See Burrage v. United States*, 571 U.S. 204, 211 (2014); *United States v. Patterson*, 38 F.3d 139, 144-145 (4th Cir. 1994) (holding that the phrase "death . . . results from," by its plain terms, does not impose a reasonable-foreseeability requirement); *United States v. Alvarado*, 816 F.3d 242, 249 (4th Cir. 2016) (affirming that *Patterson* remains "good law" following *Burrage*).

Covington acknowledges this precedent but insists that the but-for causation standard is inapplicable here because death is inherently foreseeable in drug cases, but not necessarily in Section 242 cases. Covington Br. 31, 34. Covington urges (Br. 31-34) this Court instead to follow pre-*Burrage* cases from the First and Sixth Circuits and, most notably, *United States v. Meany*, an unpublished Western District of Kentucky case that held that "[i]n such cases" where "death is not an inherently foreseeable result of violating § 242," a proximate-cause instruction is appropriate in a death-resulting case. No. 3:22-CR-00085, 2024 U.S. Dist. LEXIS 150867, at *30 (W.D. Ky. Aug. 22, 2024).

This Court should reject Covington's invitation. Covington cites no case, and the Government is aware of none, suggesting that the phrase "results from" has a different meaning in 18 U.S.C. 242 than in 21 U.S.C. 841(b)(1)(C) merely because the two statutes address different crimes. Because Section 242 does not define this phrase, this Court must give the phrase its ordinary meaning. *See Burrage*, 571 U.S. at 210. As this Court's precedents in *Patterson* and *Alvarado* hold, the plain meaning of "results from" does not require that death be a reasonably foreseeable event. *See Patterson*, 38 F.3d at 144-145; *Alvarado*, 816 F.3d at 249.

Even if *Meany* applied, its rationale does not because, unlike in that case, bodily injury was an eminently "foreseeable result" here, so no proximate-cause instruction was necessary. 2024 U.S. Dist. LEXIS 150867, at *30. Bodily injury is inherently foreseeable in most Section 242 cases and is particularly foreseeable in a case such as this one involving the denial of medical care to an inmate with a serious and obvious medical need. Here, Correctional Officer Moody-Moore told Covington at various points that W.W. could not walk or talk, had urinated on himself, was eating out of the trash can, was disoriented, had hit his head—*i.e.*, suffered bodily injury—and needed medical help.

JA2100-2109, JA2217. In other words, not only was Covington aware that W.W. was exhibiting symptoms that foreseeably lead to injury, but she was aware that the victim had *in fact* suffered bodily injury and was at substantial risk of continuing to do so.

2. No additional hindsight instruction was required.

Second, the district court properly rejected appellants' Proposed Instruction that "[d]eliberate indifference must be determined with regard to the relevant prison official's knowledge at the time in question, not with hindsight's perfect vision." JA1169. Instead, the court correctly concluded that its deliberate-indifference instruction "already called for a finding of 'actual knowledge' and thus substantially covered the issue of concern." JA5075 (citation omitted); *see also* JA1340 (requiring jury to find that Covington "actually knew of [W.W.'s] serious medical need" and "had actual knowledge of the risk of harm to the inmate," and that she "recognized that her actions were insufficient to mitigate the risk of harm to the inmate arising from his medical needs"). The court further observed that appellants' sole supporting citation for their proffered instruction was a non-binding civil case from the Eighth Circuit. JA5075 (citing *Lenz v. Wade*, 490 F.3d 991, 993 n.1 (8th Cir. 2007)). On appeal,

Covington's re-citation (Br. 37) of *Lenz* and her reiteration that she could not have foreseen what happened to W.W. in the suicide-watch cell after she left the facility fail to call into question the correctness of the district court's decision.

3. The district court's willfulness instruction substantially covered appellants' proffered instruction.

Third, the district court properly rejected appellants' Proposed Instruction that the term "willfully" in Section 242 requires that the defendant acted "voluntarily and intentionally, with the intent not only to act with a bad or evil purpose, but specifically to act with the intent to deprive a person of a federal right made definite by . . . the express terms of the Constitution or federal law or by decisions interpreting them." JA1170. This instruction was substantially covered by the charge that the district court gave. *Hager*, 721 F.3d at 184. The court correctly instructed the jury that "[a] person acts 'willfully' when that person acts voluntarily and intentionally, with the specific intent to do something that the law forbids, or with the specific intent to fail to do something the law requires[,]" which, in this case, meant "the specific intent to deprive [W.W.] of his right to be free from cruel and unusual punishment."

JA1342. The court further instructed the jury that the Government had to prove that the defendant "acted with the bad purpose of doing what the Constitution forbids." JA1342. As the district court explained, this instruction is consistent with settled precedent providing that Section 242 requires proof that the defendant possessed "the specific intent to do something the law or [C]onstitution forbids." JA5080 (citing *Screws v. United States*, 325 U.S. 91, 107 (1945)); *see also* JA5080 (explaining that "[n]o binding case law exists to compel the Court to include 'evil purpose' as part of the definition of 'willfulness,' nor is that language essential to the instruction"); JA5079-5080 (comparing instruction here with jury instructions underpinning *United States v. Cowden*, 882 F.3d 464, 474 (4th Cir. 2018), and given in *United States v. Legins*, 3:19-cr-104-DJN (E.D. Va. Feb. 4, 2020)).

Covington's citation (Br. 35) of Instruction 17-6 of the Modern Federal Jury Instructions-Criminal Procedure 17:01 (2023) as the source for her Proposed Instruction does not salvage her argument. As the district court correctly observed (JA5080), this model instruction derives from out-of-circuit cases, which are irrelevant to the correctness of the court's instruction, and *Screws*, which supports the court's instruction.

No more persuasive is Covington's argument that her proffered instruction would "ensure[] that the jury did not wrongfully convict a defendant based on a lesser standard than required by law" because the court "had [a] duty to advise the jury that a defendant could not accidentally or negligently cause an inmate serious injury or death." Covington Br. 35-36. Covington's concern is entirely addressed by the court's explicit instruction that "[n]egligence or inadvertence does not constitute deliberate indifference." JA1340.

4. No good-faith instruction was required.

Finally, the district court properly rejected appellants' Proposed Instruction that the jury must acquit the appellants if the evidence left it "with a reasonable doubt as to whether [they] acted in good faith." JA1183. Instead, the court correctly concluded that this Court's precedent does not require an additional instruction on good faith "so long as the district court gives adequate instructions on specific intent," and the court properly instructed the jury on the specific intent required for the Section 1001 false-statement charge. JA5099-5100 (citing *United States v. Fowler*, 932 F.2d 306, 317 (4th Cir. 1991)) (internal quotation marks omitted).

Covington does not address *Fowler* or the court's instruction on specific intent, instead arguing that a good-faith instruction was required because her alleged false statements in her interview with Senior Special Agent Whitney concerned a conversation that took place between her and Officer Moody-Moore two years prior. Covington Br. 38. Unsurprisingly, Covington offers no authority for her novel contention that someone cannot knowingly mislead a federal agent because the interview occurred two years after the relevant event. *See* 18 U.S.C. 3282(a) (establishing five-year statute of limitations for non-capital offenses such as 18 U.S.C. 1001). Even accepting that contention, Covington was warned at the beginning of the interview that it was a crime to lie to federal agents (JA2543), and she did not claim that the two-year period prevented her from remembering the details of her conversations with Moody-Moore; instead, she concocted a false narrative about the specific contents of those calls that deflected blame away from herself. Her argument falls far short of demonstrating that the district court's decision was incorrect or that this point was so important that the failure to give her proffered good-faith instruction seriously impaired her defense.

V. The district court did not abuse its discretion in denying Farley's Motion for a New Trial.

A. Standard of review

Federal Rule of Criminal Procedure 33 authorizes a district court to grant a new trial on the motion of a defendant "if the interest of justice so requires." Fed. R. Crim. P. 33(a). Such a motion is "highly disfavored" and should be "grant[ed] only sparingly." *United States v. Ali*, 991 F.3d 561, 570 (4th Cir. 2021) (citation and internal quotation marks omitted). This Court reviews a district court's denial of a new trial for abuse of discretion, limited to "determin[ing] whether the court's exercise of discretion, considering the law and the facts, was arbitrary or capricious." *United States v. Wilson*, 624 F.3d 640, 660 (4th Cir. 2010) (citation omitted). This Court reviews the district court's underlying legal determinations de novo and its factual findings for clear error. *United States v. Cabrera-Rivas*, 142 F.4th 199, 217 (4th Cir. 2025).

B. Evidence relating to the Section 242 counts for which Farley and her co-defendant were acquitted did not constitute prejudicial spillover evidence.

The Section 242 counts alleged that the defendants were deliberately indifferent to W.W.'s serious medical needs, resulting in his bodily injury and death. Farley asserts that because she and her co-

defendant Yolanda Blackwell were acquitted by the jury of the Section 242 counts, evidence related to these counts—most notably, video of W.W.'s repeated falls in the suicide-watch cell—impermissibly spilled over and prejudiced the jury's consideration of the Section 1001 false-statements count against her, warranting reversal of her conviction and a new trial. Farley Br. 34-40. This contention is without merit.

As an initial matter, this Court has never adopted the sort of argument Farley urges here. While the Court has entertained a "prejudicial spillover" challenge when a defendant's conviction was vacated or reversed by a court, *see, e.g.*, *United States v. Hart*, 91 F.4th 732, 741 (4th Cir. 2024), it has never extended that theory to a situation where a jury found a defendant guilty of one count but not another. Farley offers no reason to do so now. Indeed, her position proves too much: she contends that evidence relating to W.W.'s death was so prejudicial that she could not have received a fair trial, yet the jury *acquitted* her of the Section 242 charge.

Even assuming that Farley's theory was viable, it fails on the merits. Because this Court has never approved of a prejudicial spillover argument when a jury has acquitted a defendant, Farley implores this

Court to adopt the "framework" of other federal courts of appeals. Farley Br. 37-38. She also attempts to apply this Court's analysis of "the spillover effect as it applie[s] to reversed"—*i.e.*, not acquitted—"convictions on appeal." Farley Br. 38-39. Even under this novel standard, Farley bears the burden of establishing "that the challenged evidence would have been inadmissible at trial without the vacated [or acquitted] count and prejudiced [her] convictions on the remaining counts." *Hart*, 91 F.4th at 741. She cannot make either showing.

First, Farley cannot show that evidence related to W.W.'s death would have been inadmissible at a trial solely on the Section 1001 false-statements count. This Court has rejected a nearly identical argument. In *United States v. Barringer*, 25 F.4th 239 (4th Cir. 2022), the defendant asserted that spillover evidence from the underlying wire fraud counts, for which the district court granted her motion for judgment of acquittal, tainted the jury's consideration of the false-statements counts on which she was convicted. *Id.* at 246, 248. This Court disagreed, holding that evidence relating to the underlying wire fraud counts would have been admissible in a trial on the false-statements counts "to show the motive for [the defendant's] . . . subsequent false statements to investigators."

Id. at 248 (citation omitted). Said differently, this evidence "was necessary to complete the story of" the defendant's false statements during the federal investigation of her and thus would have been admissible at a retrial and did not constitute impermissible spillover. *Ibid.* (citation omitted); *see also United States v. Hornsby*, 666 F.3d 296, 311 (4th Cir. 2012) (rejecting prejudicial spillover argument because when "a defendant has been charged with attempted or actual obstruction of justice with respect to a given crime, evidence of the underlying crime" is admissible (citation omitted)).

Barringer and *Hornsby* defeat Farley's unsupported claim (Br. 35-36, 39) that evidence related to the Section 242 charge would be inadmissible at a retrial of the Section 1001 false-statements count. Like those defendants, Farley was charged with obstruction of justice—specifically, with making false statements about her actions in the hours preceding W.W.'s death to a Government agent investigating W.W.'s death. Therefore, "evidence of the underlying crime"—*i.e.*, evidence relating to the Section 242 charge involving W.W.'s death—would have been admissible in a trial solely on the false-statements count so the jury could understand "the story" of whether and how Farley lied and "to show

the motive" for why she lied. *Barringer*, 25 F.4th at 248 (quoting *Hornsby*, 666 F.3d at 311).

Second, Farley cannot show that evidence of W.W.'s death prejudiced her conviction on the Section 1001 false-statements count. "[T]his Court has previously recognized that 'concerns of prejudicial spillover [can be] mitigated by the district court's explicit instruction that the jury must consider each count separately.'" *United States v. Banks*, 104 F.4th 496, 520 (4th Cir.) (second alteration in original) (quoting *Barringer*, 25 F.4th at 249), *cert. denied*, 145 S. Ct. 338, and 145 S. Ct. 563 (2024). As the district court observed (JA5116-5117), it instructed the jury to consider each count separately (JA1312), and "absent evidence to the contrary, [this Court] can presume that the jury followed" that instruction, *Banks*, 104 F.4th at 520.

Indeed, the jury's verdict indicates that it did follow that instruction, as it acquitted Farley on the Section 242 and 1519 charges, acquitted co-defendant Blackwell on the sole (Section 242) count with which she was charged, and found Covington guilty of both offenses (including Section 242) with which she was charged. JA1296-1298. That "the jury differentiated not only between counts but among

defendants . . . is strong evidence that the jury was not blinded by raw emotion but, rather, properly compartmentalized and applied the law to the facts." *United States v. Simon*, 12 F.4th 1, 44 (1st Cir. 2021) (citation and internal quotation marks omitted); *see also United States v. Barronette*, 46 F.4th 177, 202 (4th Cir. 2022) (rejecting defendants' argument that district court should have declared a mistrial after a witness's outburst because, among other things, the district court "gave a curative instruction" and the jury appeared to heed that instruction by "mak[ing] individual guilt determinations").

The strength of the Government's case on the false-statements count further undermines Farley's claim of prejudice. *See Barringer*, 25 F.4th at 249. Critically, Farley herself conceded at trial (JA3704-3706, JA3753-3754) that she never actually called on-call physician Dr. Ericka Young, despite telling federal investigators that she (1) used a prison telephone to call Dr. Young's cell phone, (2) discussed W.W.'s symptoms with Dr. Young during that phone call, and (3) did not send W.W. to the hospital because Dr. Young did not authorize her to do so during that phone call—three of the four false statements charged in the superseding indictment. JA3736-3740 (testimony on what she told investigators);

JA97 (factual basis for false-statements count in superseding indictment). Moreover, Dr. Young testified that she did not recall receiving any calls from Farley or anyone else about W.W. and phone records confirmed that Dr. Young did not receive any calls from the prison at the time Farley told investigators she called Dr. Young. JA2726-2729, JA2737, JA6111-6112.

As for Farley's statement that Dr. Lacie Biber, the on-call psychologist, told Farley that she believed W.W. was malingering, the Government elicited testimony from Dr. Biber that she did not tell Farley that she believed W.W. was malingering (JA2472); that she did not think W.W. was a malingerer (JA2473, JA2515, JA2517-2518); and that she would need to physically see a patient, which she did not at the time of the incident, to diagnose malingering (JA2472-2473). Especially given Farley's significant credibility problems, including (1) her admission at trial that the detailed statements she made to investigators about Dr. Young were false; (2) her testimony that, when the case agent pulled out a tape recorder during a first attempted interview, Farley immediately "hopped up out of" her chair and left the room; (3) evidence of numerous inaccuracies in the report Farley completed the night of W.W.'s death;

and (4) her testimony that, when the case agent confronted Farley with evidence contradicting her statement, Farley responded that "that was her story and she was sticking to it" (JA2583-2584, JA3751-3761), the jury could have credited Dr. Biber's testimony. *See United States v. Foster*, 507 F.3d 233, 245 (4th Cir. 2007), *abrogated on other grounds by United States v. Banks*, 29 F.4th 168 (4th Cir. 2022).

C. The Government did not present false testimony.

The Supreme Court's decision in *Napue v. Illinois*, 360 U.S. 264 (1959), prohibits the government from "knowingly us[ing] false evidence, including false testimony, to obtain a tainted conviction or allow[ing] it to go uncorrected when it appears." *Juniper v. Davis*, 74 F.4th 196, 211 (4th Cir. 2023) (citation omitted). To make a *Napue* claim, which is a type of *Brady* claim,[9] a defendant must show that a witness's testimony was (1) false, (2) material, and (3) known by the prosecutor to be false. *Ibid.* Farley argues that the Government committed a *Napue* violation, warranting a new trial, because one of its witnesses, medical examiner

[9] In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that the prosecution's "suppression . . . of evidence favorable to an accused upon [her] request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

Dr. Julia Berry, falsely testified that W.W.'s toxicology analysis screened for K2, a synthetic cannabinoid.[10] Farley Br. 40-43. Because Farley waived this argument and because Dr. Berry's testimony was neither false nor material, this claim fails.

First, the district court correctly found that Farley waived her *Napue* claim by failing to raise it until her reply brief in support of her Motion for Judgment of Acquittal and New Trial (JA5111), before addressing the claim on the merits. This Court may affirm on the waiver ground alone.

Even if this Court is inclined to consider the argument, the district court properly found that Dr. Berry's testimony was not false. JA5111. Dr. Berry made clear that she was not a toxicologist, she did not complete

[10] Citing two habeas cases, Farley incorrectly asserts that this Court reviews the district court's denial of a *Napue* claim de novo. Farley Br. 40. The Court reviews a district court's denial of a motion for a new trial based on an alleged *Napue* violation for abuse of discretion and reviews the court's underlying legal determination de novo. *See United States v. Wilson*, 624 F.3d 640, 660 n.24 (4th Cir. 2010) (discussing standard of review in context of a *Brady* claim); *see also United States v. Willis*, 374 F. App'x 402, 404 (4th Cir. 2010) (finding "no abuse of discretion" in district court's ruling on *Napue* claim).

the toxicology report included with the autopsy, and she was not sure whether the toxicology analysis screened for K2:

Def. counsel: "You testified about toxicology and then said that 'they.' You're not a toxicologist, are you?"

Dr. Berry: "No, I'm not."

Def. counsel: "So you are relying on some reports that were conducted by a toxicology examination, correct?"

Dr. Berry: "Yes. Correct."

. . .

Def. counsel: "And am I correct that -- and this -- I don't know if you're going to know this. K2, if you've heard of it, is a synthetic cannabinoid?"

Dr. Berry: "Uh-huh. Yes, I've heard of it."

Def. counsel: "Okay. And if you look at the items that were screened for on the toxicology screen –"

Dr. Berry: "Uh-huh."

Def. counsel: "-- would you agree that cannabinoids were not one of the categories tested?"

Dr. Berry: "I believe that they fall under the alkaline-extractable drugs category. I do know that cannabinoids are part of the screening that they do. And K2 is one that's been around long enough that they know precisely how to screen for it. So it should have been included. Again, I'm not a toxicologist. I didn't sign off on this report. So

somebody else might be better to speak to that, but it should have been included in the alkaline-extractable drugs."

Def. counsel: "So the best you can say here is that you can't say for sure whether it was screened for?"

Dr. Berry: "I will not attest, with a hundred percent certainty, that it was screened for."

JA1648, JA1720-1721. In other words, Dr. Berry expressly admitted that it was possible the toxicology analysis did not screen for K2, and she made the limits of her knowledge clear through caveats in her testimony—that she "believe[d]" K2 "should have been" tested for, but that she was "not a toxicologist" and "didn't sign off on [the] report" and therefore "somebody else might be better to speak to" the precise parameters of the toxicology analysis. Contrary to Farley's assertion (at 41), the jury was not left with the erroneous impression that W.W. was tested for K2 and none was found; Dr. Berry expressly stated that it was possible W.W. had not been tested for K2.

The district court also correctly found that even if it considered Dr. Berry's testimony to be false, her testimony on that point was not material. JA5111-5112 n.8. At trial, Farley elicited testimony about the prevalence of K2 at the facility and testified that she thought W.W. was

on drugs when she evaluated him the night he died (JA3443-3444, JA3625-3626, JA3689), apparently to suggest that she did not know he had a serious medical need—a perplexing suggestion because even if W.W. was on drugs, he had an obvious, serious, and ultimately fatal medical condition. *See* JA1339-1340 (jury instructions); JA4156, JA4206-4207 (closing argument). But the jury *acquitted* Farley of the Section 242 charge. Whether W.W. was on drugs, and more specifically, whether W.W. was tested for K2, has no bearing on Farley's conviction for lying to federal investigators about phone calls from the night before W.W.'s death. Therefore, there is no "reasonable likelihood" that this testimony "could have affected the judgment of the jury." *Burr v. Jackson*, 19 F.4th 395, 414 (4th Cir. 2021) (citation omitted).

Nor was this testimony material to the "[c]redibility of [G]overnment witnesses," which Farley claims was "central to [her] defense." Farley Br. 43. Dr. Berry conducted W.W.'s autopsy and testified about W.W.'s injuries and cause of death; it was undisputed that W.W. suffered injuries and died. Dr. Berry's testimony on the tangential issue of whether the toxicology analysis screened for the presence of particular substances in W.W.'s body—which Dr. Berry readily admitted she was

unsure about, as she did not perform the toxicology analysis—did not impact her credibility. Moreover, Dr. Berry's credibility was immaterial because, as noted above, (1) Farley was acquitted of the Section 242 charge; (2) Dr. Berry's testimony on this point was unrelated to the truthfulness of Farley's statements to federal investigators; and (3) Farley herself admitted at trial that she told federal investigators about the conversations underlying the false-statements charge.

D. Farley cannot establish cumulative error.

Farley's final contention is that her prejudicial spillover and *Napue* arguments, considered cumulatively with Covington's arguments in support of a new trial raised below, *see* pp. 20-21 n.4, *supra*, necessitate a new trial. Farley Br. 44. "Pursuant to the cumulative error doctrine, the cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error," warranting reversal where "such errors . . . so fatally infect the trial that they violated the trial's fundamental fairness." *United States v. Basham*, 561 F.3d 302, 330 (4th Cir. 2009) (alteration, citation, and internal quotation marks omitted). The district court correctly rejected this argument. JA5118-5119. Because Farley failed to

demonstrate that the district court committed *any* errors, harmless or otherwise, the cumulative error doctrine does not apply. *See, e.g.*, *United States v. Fernandez*, 526 F. App'x 270, 279 (4th Cir. 2013). Even if any errors existed, they cumulatively would not warrant a new trial here because "the strength of the [G]overnment's evidence leaves little doubt that the jury would have returned [a] guilty verdict[] [on the Section 1001 false-statements count] irrespective of the identified errors." *United States v. Woods*, 710 F.3d 195, 209 (4th Cir. 2013). Again, defendant Farley admitted during her trial testimony that some of her statements to federal agents were false. JA3704, JA3736-3740.

VI. The prosecution and the district court did not suppress exculpatory or impeachment evidence.

Covington argues that her due process rights were violated, warranting a new trial, because the district court did not compel prosecutors to search the BOP email system for potentially exculpatory or impeaching information and did not issue her Rule 17(c) Subpoenas exactly as she submitted them. Covington Br. 38-44. Farley adopts and incorporates this argument as well. Farley Br. 44. However, this argument is without merit.

A. Standard of review

This Court generally reviews a district court's denial of a motion for a new trial based on a *Brady* claim for abuse of discretion, the court's underlying legal conclusions de novo, and its factual findings for clear error. *United States v. Kuehner*, 126 F.4th 319, 330 (4th Cir.), *cert. denied*, 145 S. Ct. 2762 (2025). Where a defendant failed to raise the specific *Brady* argument she makes on appeal in her motion for a new trial, this Court's review is for plain error. *See United States v. Catone*, 769 F.3d 866, 871 (4th Cir. 2014).[11]

B. Neither *Brady* nor Rule 17(c) entitled Covington to access the BOP email system.

Covington's argument on this issue is difficult to discern. Covington argues that her "constitutional rights were violated when the district court failed to require prosecutors to search documents within their

[11] "To establish plain error, [a defendant] must show (1) that the court erred, (2) that the error is clear and obvious, and (3) that the error affected his substantial rights, meaning that it 'affected the outcome of the district court proceedings.'" *Catone*, 769 F.3d at 871 (quoting *United States v. Olano*, 507 U.S. 725, 732-734 (1993)). "Even when this burden is met, [this Court] retain[s] discretion whether to recognize the error and will deny relief unless the district court's error 'seriously affects the fairness, integrity or public reputation of judicial proceedings.'" *Ibid.* (quoting *Olano*, 507 U.S. at 736).

possession for exculpatory information and allowed them to block [her] from asking BOP to run relevant email searches for exculpatory information." Covington Br. 39. But then Covington cites in support of this argument cases discussing *Brady* (*id.* at 40-41), which imposes requirements on the *prosecution* to disclose favorable and material information to the defense. *See Brady*, 373 U.S. at 87. Covington further argues that the district court erroneously granted the prosecution's motion to modify her Rule 17(c) Subpoenas to its witnesses and FCI Petersburg, which "t[ook] away [her] ability to obtain discoverable [material] on BOP's email system" and "permitted the prosecutors to limit [her] access to critical evidence." Covington Br. 43.

Given Covington's case citations, her argument is best construed as a *Brady* claim that the prosecution, abetted by the district court, suppressed favorable and material evidence in violation of her due process rights. In her Motion for a New Trial, Covington did not argue, as she now appears, that the prosecution's failure to search the BOP email system for emails of BOP employees it intended to call as witnesses and the district court's failure to rubberstamp her Subpoenas violated *Brady*. Her closest new-trial argument was that the prosecution violated

Brady and the Jencks Act by failing to review the OIG case agent's files for discoverable information and disclose that information to the defense. JA4456-4458. This Court should, therefore, review Covington's unpreserved claim for plain error. *See Catone*, 769 F.3d at 871. Regardless of the standard of review, however, her claim fails.

To succeed on her *Brady* claim, Covington must show that "the undisclosed evidence was (1) favorable to [her] either because it is exculpatory, or because it is impeaching; (2) material to the defense, *i.e.*, prejudice must have ensued; and (3) that the prosecution had materials and failed to disclose them." *United States v. Wilson*, 624 F.3d 640, 661 (4th Cir. 2010) (internal quotation marks and citation omitted).[12] She fails to meet her burden.

First, Covington cannot show that any undisclosed evidence was favorable or material. This Court has held that "*Brady* requests cannot

[12] Covington also argues that the prosecution violated its obligation under *Giglio v. United States*, 405 U.S. 150, 153-154 (1972), "to produce impeachment evidence including evidence affecting credibility of its witnesses." Covington Br. 42 (citation and internal quotation marks omitted). Because "material impeachment information is encompassed within the *Brady* rule," *United States v. Parker*, 790 F.3d 550, 558 (4th Cir. 2015), the analysis of Covington's *Brady* claim applies to her *Giglio* claim as well.

be used as discovery devices" and that the "mere possibility that an item" of information "might have helped the defense" does not establish materiality for *Brady* purposes. *United States v. Dugan*, 136 F.4th 162, 170 (4th Cir.) (citations omitted), *cert. denied*, No. 25-5330, 2025 U.S. LEXIS 3520 (Oct. 6, 2025). Covington sought to use *Brady* as a discovery device here, conceding that she had "no idea what, if anything" existed on the BOP email servers (JA678), and asserting the right to "ask[] BOP to run relevant email searches for exculpatory information" regarding "[BOP] employees that the [prosecution] intended to call as witnesses." Covington Br. 39. "[B]ecause [Covington] can only speculate on what the requested information [in the BOP email system] might reveal, [s]he cannot satisfy *Brady*'s materiality requirement." *Dugan*, 136 F.4th at 171; *see also, e.g.*, *United States v. Briscoe*, 101 F.4th 282, 297 (4th Cir.) ("[R]ank speculation as to the nature of the allegedly suppressed materials . . . cannot establish a *Brady* violation." (second alteration in original and citation omitted)), *cert. denied*, 145 S. Ct. 628 (2024).

Covington cannot demonstrate materiality for the additional reason that the district court ordered, and the prosecution provided, the substance of what she requested. In her motion for discovery, Covington

claimed that "material evidence could exist" on the BOP system relating to several categories of evidence: whether witnesses discussed anything about the investigation or case, evinced any animus toward the defendants, or faced disciplinary action because of the incident. JA686-689. While the district court did not order the prosecution to acquire and examine millions of emails days before trial, it did require the Government to "get to the bottom of" whether evidence on these topics existed (JA1017), and the prosecution did so. The prosecution reinterviewed 35 BOP staff members and inmates; asked them whether they had written anything about the case, made any public statements about the case, or made any statements that might reflect bias against the defendants; and provided those responses and any accompanying materials to the defendants. JA1023, JA1030. The prosecution also explained that it had already provided, prior to Covington's request, documents in its possession relating to disciplinary actions taken against BOP employees as part of the case. JA1024-1028.

In other words, the prosecution provided Covington the information she requested. Any favorable emails or other documents she speculates might have existed would have been immaterial because they were

"cumulative," *Burr v. Jackson*, 19 F.4th 395, 411 (4th Cir. 2021), and because there was no "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," *id.* at 409-410 (citation omitted); *see also id.* at 413 (rejecting defendant's *Brady* argument in part because the defendant "had an opportunity to cross-examine [the witness] at trial" on the issue and had not "clarified how having access [to additional materials] would have assisted his trial strategy rather than just being cumulative to the evidence he was already aware of").

Second, Covington cannot show that "the prosecution had materials and failed to disclose them." *Wilson*, 624 F.3d at 661. To be sure, "*Brady's* commands do not stop at the prosecutor's door; the knowledge of some of those who are part of the investigative team is imputed to prosecutors regardless of prosecutors' actual awareness." *United States v. Robinson*, 627 F.3d 941, 951 (4th Cir. 2010). But "this principle is not boundless," *United States v. Taylor*, 942 F.3d 205, 225 (4th Cir. 2019), and "*Brady* does not require the Government to investigate the defense's theory of the case or create evidence that might be helpful to the defense," *United States v. Makarita*, 576 F. App'x 252, 262 (4th Cir. 2014). Rather, the

prosecution's disclosure obligations are limited to "those who are part of the investigative team," *Robinson*, 627 F.3d at 951, like police officers assigned to a case, *see Fullwood v. Lee*, 290 F.3d 663, 685 n.12 (4th Cir. 2002); *Barbee v. Warden*, 331 F.2d 842, 846 (4th Cir. 1964), and the FBI agent assigned to a case, *see United States v. Sutton*, 542 F.2d 1239, 1241 & n.2 (4th Cir. 1976).

Because this case involved an in-custody death at a BOP facility, OIG, the independent agency assigned to investigate misconduct within the BOP, was the equivalent of the FBI or the police. BOP referred the incident to OIG within two days, and OIG handled the investigation from there, conducting witness interviews, reviewing documents, and accompanying the prosecutors to court proceedings, including trial, among other things. *See* JA2539-2542 (OIG case agent's testimony, explaining OIG's role and her investigative steps). These tasks indicate that OIG was part of the prosecution team in this case and subject to *Brady*'s disclosure requirements. *See, e.g.*, *United States v. Avenatti*, No. 19-CR-374, 2022 U.S. Dist. LEXIS 28472, at *30-36 (S.D.N.Y. Feb. 15, 2022) (discussing factors and cases and differentiating responding to requests for documents from engaging in joint review of the documents).

And Covington does not dispute that the prosecution fulfilled its discovery obligations regarding the materials in OIG's possession.

Without a claim that the prosecution suppressed OIG's materials, Covington pivots to arguing that the prosecution's obligation to disclose exculpatory information extended to materials within BOP's possession, because BOP is a DOJ agency "closely aligned with the prosecution."[13]

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[13] The cases Covington cites (Br. 40-41) do not support her novel contention that the Department of Justice has the obligation to search all materials in the possession of any DOJ agency, including BOP, in any criminal case involving that agency. Rather, they confirm the rule that only government entities that are part of the prosecution's investigative team are subject to *Brady*'s disclosure requirements. *See United States v. Pearson*, No. 1:15-cr-193, 2016 U.S. Dist. LEXIS 181650, at *7 (E.D. Va. Aug. 11, 2016) (concluding that the DEA's knowledge could not be imputed to the prosecution because the record did not indicate that the DEA was involved in the investigation or prosecution of the defendant); *United States v. Brooks*, 966 F.2d 1500, 1501-1503 (D.C. Cir. 1992) (concluding that the D.C. U.S. Attorney's Office had an obligation to search Washington Metropolitan Police Department (MPD) files where MPD officer was "government's chief witness" involved in drug case and defense counsel "pinpointed" specific files, rather than "asking the U.S. Attorney's Office to examine some sprawling mass of records," and the request was not "purely speculative"); *United States v. Danielczyk*, No. 1:11cr85, 2011 U.S. Dist. LEXIS 57151, at *10 (E.D. Va. May 26, 2011) (requiring government to search the files of the "closely aligned" DOJ but not the files of the Federal Election Commission, which "has not contributed to this case in any way"); *United States v. Santiago*, 46 F.3d 885, 893-895 (9th Cir. 1995) (concluding BOP files on government's inmate witnesses were in government's possession where BOP "actually contributed to the investigation by locating most of the physical evidence

Covington Br. 41. But this Court has rejected attempts by defendants to "stretch *Brady* beyond its scope" and "impose a duty on prosecutors to learn of any favorable evidence known by *any* government agent." *Taylor*, 942 F.3d at 225 (holding that information in the possession of ATF was not discoverable where FBI conducted criminal investigation). Because such a requirement "would impose unacceptable burdens on prosecutors and the police," *Horner v. Nines*, 995 F.3d 185, 205 (4th Cir. 2021) (alteration and citation omitted), "[c]ourts have routinely refused" to "extend *Brady*[]" to "require prosecutors to do full interviews and background checks on everyone who touched the case," *Robinson*, 627 F.3d at 952.

Indeed, federal courts, including within this Circuit, have repeatedly concluded that BOP is not part of the prosecution team for discovery purposes where BOP did not conduct the criminal investigation. *See, e.g.*, *United States v. Oman*, No. 3:18-cr-311-MOC-DCK-5, 2022 U.S. Dist. LEXIS 188692, at *20-23 (W.D.N.C. Oct. 17,

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during the initial search," including the murder weapon and bloody clothing, then concluding these files were not material because the defense did not show "case-specific facts which would demonstrate the materiality of the information sought").

2022) (refusing to find that records in the BOP's custody should be imputed to the government where the BOP was not the investigating agency); *United States v. Thomas*, No. 19-CR-830-2, 2020 U.S. Dist. LEXIS 261355, at *10-11 (S.D.N.Y. June 9, 2020) (rejecting argument that the government must disclose materials in the BOP's custody, because the mere fact "the BOP is a component of the Department of Justice . . . is not sufficient to make the BOP an arm of the prosecution"); *United States v. Battle*, 264 F. Supp. 2d 1088, 1201 (N.D. Ga. 2003) (rejecting defendants' contention that "because the BOP employees are connected with the Department of Justice that the prosecution team constructively possessed exculpatory information that could have been within the knowledge of BOP staff" and refusing to find that prosecutors' disclosure obligations extended beyond investigative team). Federal courts have reached this conclusion even in cases in which the BOP "support[ed the] ongoing investigation" by responding to document requests; "the mere fact that a government entity responds to targeted document requests does not, without more, make that entity part of the prosecution team." *United States v. Blondet*, No. 16-CR-387 (JMF), 2022

U.S. Dist. LEXIS 31752, at *3-4 (S.D.N.Y. Feb. 23, 2022) (citation omitted).

This Court should likewise reject Covington's approach, which would require prosecutors to sift through the emails of every government employee in search of material that *might* be exculpatory.

Covington's related contention (Br. 43) that the district court abetted the prosecution's suppression of favorable and material evidence by granting its motion to modify her Rule 17(c) Subpoenas to prosecution witnesses and FCI Petersburg also fails. As the court explained, Supreme Court precedent dictates that materials Covington "already possesses cannot be said to be 'not otherwise procurable reasonably in advance of trial'"—one of the requirements for a Rule 17(c) Subpoena. JA1120 (citing *United States v. Nixon*, 418 U.S. 683, 699 (1974)). Similarly, because Covington already possessed these materials, she could not show that she could not "properly prepare for trial" without them, another requirement for a Rule 17(c) Subpoena. *Nixon*, 418 U.S. at 699. Accordingly, the court correctly modified the Subpoena to require FCI Petersburg to "[p]roduce all records that fall within the parameters listed below *and are not already in the possession of Shronda Covington or her attorneys*." JA1120

(quoting Subpoenas). This decision accords with the principle, set forth above, that cumulative evidence is not material under *Brady*.

Nor did the court plainly err in modifying the FCI Petersburg Subpoena to remove categories (6) and (7), which sought, respectively, written communications from BOP officials about Covington, among other things, and documents relating to disciplinary actions for several witnesses. The court found—based on Covington's admission, which she does not now dispute—that Covington sought these materials for impeachment purposes: to determine whether other BOP employees bore "personal animus" against Covington and whether certain witnesses received benefits for testifying. JA1121, JA6266-6270. In concluding that impeachment material was not a valid basis for a Rule 17(c) Subpoena, the district court again properly grounded its analysis in Supreme Court precedent, which provides that "the need for evidence to impeach witnesses is insufficient to require its production in advance of trial." JA1120-1121 (quoting *Nixon*, 418 U.S. at 701). In any event, this impeachment evidence was not material under *Brady*.[14]

[14] To the extent the Court treats the Rule 17(c) Subpoena issue as a separate argument, rather than as a component of Covington's *Brady*

VII. Farley's sentence was procedurally reasonable.

A. Standard of review

A challenge to the district court's application of the Sentencing Guidelines is a challenge to the sentence's procedural reasonableness that this Court reviews for abuse of discretion. *See United States v. Gross*, 90 F.4th 715, 720 (4th Cir. 2024). "In assessing whether a sentence is procedurally unreasonable because of a misapplication of the Guidelines, [this Court] review[s] the district court's legal conclusions de novo and factual findings for clear error." *United States v. Reed*, 75 F.4th 396, 404 (4th Cir. 2023). "If the application [of the Sentencing Guidelines] turns on a question of fact, the clear error standard applies; if it turns on a legal interpretation, de novo review is appropriate." *Ibid.* (citation omitted). Review for clear error requires this Court to "uphold the district court's determination so long as it was plausible in light of the record viewed in its entirety." *Gross*, 90 F.4th at 722 (citation and internal quotation marks omitted).

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claim, it fails for the same reasons. The district court did not abuse its discretion when it applied Supreme Court precedent to limit the scope of the Subpoenas to exclude (1) documents Covington already possessed and (2) impeachment material. *See United States v. Richardson*, 607 F.3d 357, 368 (4th Cir. 2010); *Nixon*, 418 U.S. at 699, 701.

B. The district court did not clearly err in considering Farley's conduct on the day of W.W.'s medical crisis as relevant conduct to calculate her Sentencing Guidelines range.

"Under the Sentencing Guidelines, the sentencing range for a particular offense is determined on the basis of *all* 'relevant conduct' in which the defendant was engaged and not just with regard to the conduct underlying the offense of conviction." *Witte v. United States*, 515 U.S. 389, 393 (1995) (emphasis added; citation omitted). As pertinent here, Section 1B1.3 defines relevant conduct to include "all acts and omissions committed . . . by the defendant . . . that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." Sentencing Guidelines § 1B1.3(a)(1)(A).

A district court's use of relevant conduct to increase a defendant's Sentencing Guidelines range is limited by new amendment subsection (c), which provides that "[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, *unless such conduct also establishes, in whole or in part, the instant offense of conviction*." Sentencing Guidelines § 1B1.3(c) (emphasis added). In other words, *some* acquitted conduct—specifically, that which overlaps

with the count of conviction—*can* be relevant when determining an appropriate sentence for convicted conduct. The Sentencing Guidelines make clear that "the court is in the best position to determine whether such overlapping conduct . . . qualifies as relevant conduct." *Id.* comment. (n.10). Because the district court's application of Section 1B1.3 turns on a question of fact—whether the subject of Farley's false statements, *i.e.*, her conduct on the day of W.W.'s medical crisis, was acquitted conduct that the court could consider relevant—this Court's review is for clear error. *See United States v. McVey*, 752 F.3d 606, 610-611 (4th Cir. 2014).

The district court did not clearly err here. In calculating Farley's Sentencing Guidelines range, the district court permissibly considered certain acts and omissions of hers on January 9, 2021, as "relevant conduct as to her false statements" (JA5346)—*i.e.*, the acts and omissions about which Farley made false statements. This conduct provided critical context *for the criminal charge for which Farley was convicted*. This included Farley's lies about whether she, in her position of trust as a BOP nurse, had contacted a physician about the care of an exceedingly vulnerable inmate, or whether she instead ensured that inmate was restrained in an isolation cell. As the court took pains to make clear, it

did not consider acquitted conduct, such as Farley's deliberate indifference or her false entries in her official report. Rather, when assessing Farley's culpability for "l[ying] . . . during her interview" with federal investigators who were looking "into W.W.'s death," the court reasonably recognized that Farley's lies had been intended to evade accountability for having "take[n] advantage of her position as the sole medical practitioner that evening to facilitate W.W.'s placement on suicide watch." JA5373-5374. The court correctly concluded that the context of Farley's lies to investigators supported application of the three sentencing enhancements. *See also* JA4888-4891 (collecting cases and arguing in support of enhancements).

The district court's approach finds support in this Court's decision in *United States v. Agyekum*, 846 F.3d 744 (4th Cir. 2017). That case involved a defendant who "concealed" his prior illegal conduct "from law enforcement investigators" by structuring currency transactions to evade financial reporting requirements to hide his profits from illicit drug distribution. *Id.* at 752. This Court had "little difficulty" in concluding that the defendant's "ongoing drug dealing activity," which led to his need to "conceal his overall illegal activity," was "relevant conduct" when

determining the defendant's sentence for his currency-structuring offense. *Ibid.* Likewise, here, Farley's materially false statements to federal investigators sought to conceal actions that might have contributed to W.W.'s death. Those actions, which provided necessary context for Farley's lies, were relevant for evaluating the culpability of the offense for which Farley had been convicted and determining an appropriate sentence. *See, e.g.*, *United States v. Young*, 266 F.3d 468, 477-478 (6th Cir. 2001) (finding defendant's underlying "embezzlement conduct was necessarily . . . relevant to the money laundering offense" because it "significantly facilitated" the "basis of his money laundering conviction," and therefore was relevant as an act taken "in preparation for" the offense of conviction); *United States v. Cianci*, 154 F.3d 106, 108, 112-113 (3d Cir. 1998) (finding defendant's uncharged acts of embezzlement, which "le[d] to his receipt of the income he failed to report," were properly considered relevant for tax evasion convictions).

Farley's argument (Br. 26-30) that the district court relied on acquitted conduct in calculating her Sentencing Guidelines range, in contravention of new amendment Section 1B1.3(c), is flatly contradicted by the transcript of her sentencing hearing. Farley does not cite any

specific portions of the sentencing transcript where, in her view, the court factored acquitted conduct into its determination of her sentence. As described above, the court made clear at least four times that it was *not* sentencing Farley based on her acquitted conduct. *See* pp. 26-27, *supra*. Indeed, the court's refusal to rely on any of Farley's acquitted conduct was evident in its decision *not* to apply the eight-level specific offense characteristic under Section 2B1.1(b)(16)(A) for an offense that involves the reckless risk of death or serious bodily injury.

Factual shortcomings aside, Farley's argument fails on the law as well. She proposes a "relevant conduct 'plus' standard." Farley Br. 29-30. To the extent that Farley is inviting this Court to graft an additional requirement on to Section 1B1.3's requirement that acquitted conduct must "also establish[], in whole or in part, the instant offense of conviction" to be relevant, she cites no precedent and offers no reason to do so. Sentencing Guidelines § 1B1.3(c). This Court should reject Farley's effort to further limit sentencing courts' discretion beyond the acquitted-conduct amendment.

C. The district court did not clearly err in applying sentencing enhancements to increase Farley's Sentencing Guidelines offense level.

Farley also argues that the district court erred in applying the Sentencing Guidelines enhancements for (1) W.W.'s status as a vulnerable victim; (2) the physical restraint of W.W. in the suicide-watch cell; and (3) Farley's abuse of her position of trust and special skill as a BOP nurse. Farley Br. 31-34. The district court's application of these enhancements are factual determinations that this Court reviews for clear error. *See United States v. Lawson*, 128 F.4th 243, 249 (4th Cir. 2025) (vulnerable victim); *United States v. Wilson*, 198 F.3d 467, 471-472 (4th Cir. 1999) (physical restraint of person); *United States v. Brewer*, 157 F.4th 332, 335-336 (4th Cir. 2025) (abuse of position of trust). As explained below, the district court committed no error, clear or otherwise, in its application of the three enhancements.

1. The record amply supported the court's application of a two-level sentencing enhancement for W.W.'s status as a vulnerable victim.

Section 3A.1.1 provides a two-level sentencing enhancement "[i]f the defendant knew or should have known that a victim of the offense was a vulnerable victim." Sentencing Guidelines § 3A1.1(b)(1). A

"vulnerable victim" is a person "who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct." *Id.* comment. (n.2). Application of this enhancement "requires a fact-based explanation of (1) why advanced age or some other characteristic made one or more victims unusually vulnerable to the offense conduct and (2) why the defendant knew or should have known of this unusual vulnerability." *Lawson*, 128 F.4th at 250 (citation and internal quotation marks omitted).

The record amply supported the district court's application of this enhancement. The court found that W.W. was a vulnerable victim because: (1) he needed medical care—he had hit his head, could not speak properly, and showed other signs of medical distress—which, as an inmate, he depended on prison staff to provide; and (2) Farley knew that W.W. was suffering from a serious medical condition that placed him at some risk of harm in light of (a) her evaluation of W.W.; (b) her documentation in her Clinical Encounter Report of W.W.'s medical symptoms, including that he had fallen and had an abrasion on his head, had dilated pupils and an abnormally high pulse, was slurring his speech, and could not communicate who he was, where he was, and what time it

was, among other things (JA2365-2369, JA6108-6110); and (c) her placement of W.W. on suicide watch (JA5362).

These findings are not challenged by Farley. Instead, she asserts that the enhancement does not apply because W.W. was no different from any other inmate victim in a Section 242 case. Farley Br. 32. But that is plainly untrue, as most inmates can, for example, talk and walk. *See, e.g.*, JA3218 (Covington testifying that W.W.'s reported symptoms were "not normal"). W.W. was particularly vulnerable because he was, effectively, helpless. *See Lawson*, 128 F.4th at 251 (explaining why elderly victims were "vulnerable" and "especially susceptible" to scam). The court provided the necessary "link between" W.W.'s position as a disoriented, incommunicative inmate who could not advocate for himself but desperately needed medical attention and his "susceptibility to [Farley's] criminal conduct." *Ibid.*; *see also United States v. Lambright*, 320 F.3d 517, 518 (5th Cir. 2003) (affirming the district court's application of the vulnerable victim enhancement based in part on its finding that the victim "was completely dependent upon the care of the correction officers").

2. The record amply supported the court's application of a two-level enhancement for W.W.'s restraint in the suicide-watch cell.

Section 3A1.3 provides a two-level sentencing enhancement "[i]f a victim was physically restrained in the course of the offense." Sentencing Guidelines § 3A1.3. "'Physically restrained' means the forcible restraint of the victim such as by being tied, bound, or locked up." Sentencing Guidelines § 1B1.1 comment. (n.1(K)).

The record amply supported the district court's application of this enhancement. The court found that W.W. was restrained on a gurney before being placed in the more-restrictive suicide-watch cell, where he was "left confined alone" until his death, and that Farley, through her conversation with Dr. Biber about W.W., "oversaw and was pivotal in the decision that resulted in W.W. being placed" in the cell where he would die. JA5366-5367.

Again, Farley does not challenge these findings. Instead, despite the Sentencing Guidelines' explicit definition of physical restraint to include being "locked up," she argues, in one sentence, that this enhancement does not apply because W.W. was *already* incarcerated. Farley Br. 32-33. She provides no support for this atextual interpretation

of Section 3A1.3, which merely requires that the physical restraint enable the commission of the offense for the enhancement to apply, nor does she grapple with the district court's recognition that she facilitated W.W.'s placement on a gurney and subsequent move to a more restrictive, solitary cell. More fundamentally, the district court did not apply the enhancement because W.W. was lawfully incarcerated; rather, the court applied the enhancement because W.W. was restrained *in addition to* his lawful incarceration. *See United States v. Wilson*, 686 F.3d 868, 872 (8th Cir. 2012) (upholding application of physical-restraint enhancement in a conviction under 18 U.S.C. 242 where the defendant moved the lawfully incarcerated inmate victims from their regular cells where they were safe to violent cells where they were assaulted).

3. The record amply supported the court's application of a two-level enhancement for Farley's abuse of her position of trust as a BOP nurse.

Section 3B1.3 provides a two-level sentencing enhancement "[i]f the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense." Sentencing Guidelines § 3B1.3. A position of trust is "characterized by professional or managerial discretion (*i.e.*,

substantial discretionary judgment that is ordinarily given considerable deference)" that is ordinarily "subject to significantly less supervision than [positions that] are primarily non-discretionary in nature." *Id.* comment. (n.1). A special skill "refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing," such as doctors. *Id.* comment. (n.4).

The record amply supported the district court's application of this enhancement. The court found that Farley's position as a nurse qualified as one of "special skill" and that her role as the only medical provider at FCI Petersburg when she encountered W.W. qualified as a position of public trust, as inmates relied on her and staff deferred to her judgment. JA5373; *see also* JA3603-3605, JA3607-3608 (testimony of correctional officer who transported W.W. to suicide-watch cell that he deferred to Farley's decision because she was the expert on medical issues). The court further found that Farley, as she herself admitted, utilized her position to facilitate W.W.'s placement on suicide watch through statements to Dr. Biber indicating that W.W. was behaving atypically, would not be going to the hospital, and had been seen with a razor—misrepresentations that underlay the false statements Farley

subsequently made and for which she was convicted under 18 U.S.C. 1001. JA5373-5374. The court also observed that Farley claimed that prior to speaking to Dr. Biber she spoke to Dr. Young, told Dr. Young about W.W.'s symptoms, and that Dr. Young advised her to call the on-call psychologist instead of sending W.W. to the hospital. JA5374.

Farley argues that this enhancement does not apply for two reasons: (1) she was acquitted of the conduct that involved her position as a nurse; and (2) she did not take advantage of this position to commit a difficult-to-detect wrong but instead placed W.W. in a suicide-watch cell, which was the safest place in the prison. Farley Br. 33-34. Not so. The first argument fails because the court permissibly considered Farley's lies about whether she, in her position of trust as a BOP nurse, had contacted a physician about W.W.'s care, or whether she instead ensured that W.W. was restrained in an isolation cell based on her statements to Dr. Biber that she had medically evaluated W.W. and he was not going to the hospital. Further, Farley drew upon her education, training, and experience as a nurse in providing a voluntary statement to federal investigators. The second argument fails because the suicide-watch cell was not the safest place in the prison for W.W.—indeed, he

died in isolation there, and Farley herself admitted W.W. needed to go to the hospital—and the court correctly recognized that Farley's position as a nurse significantly contributed to facilitating the commission of her Section 1001 offense.

CONCLUSION

For the foregoing reasons, this Court should affirm the convictions of both Covington and Farley and affirm Farley's sentence.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument. Given the multitude of issues in the case and their complexity, the United States agrees that oral argument is warranted.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 24,260 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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