FILED
United States Court of Appeals
Tenth Circuit

September 10, 2024

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TRAVIS VONTRESS,

Defendant - Appellant.

No. 22-3119
(D.C. No. 6:20-CR-10028-EFM-19)
(D. Kan.)

---

**ORDER AND JUDGMENT***

---

Before **MATHESON**, **PHILLIPS**, and **MORITZ**, Circuit Judges.

---

Travis Vontress was the treasurer for a drug-trafficking organization that operated around Wichita, Kansas. After the government dismantled the organization, Vontress was charged with multiple conspiracies and substantive offenses. Rather than accept a plea deal, Vontress proceeded to trial where he was convicted on all counts.

---

* This order and judgment and other materials were previously sealed at the request of the appellant and with the consent of the government and for good cause shown. Both parties subsequently consented to the unsealing of this order and judgment and other materials. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

On appeal, Vontress alleges that the government suppressed material exculpatory evidence and that he received ineffective assistance of counsel. He also argues that we should suppress wiretap evidence. Finding his arguments unavailing, we affirm.

## BACKGROUND

### I. Factual Background

Travis Knighten led a drug-trafficking organization while serving a life sentence in Oklahoma state prison. He used contraband cellphones to coordinate drug sales with dozens of subordinates around Wichita, Kansas. Vontress, Knighten's cousin, was the organization's treasurer. As treasurer, Vontress collected proceeds from street dealers to pay the organization's members and allocated funds for new drug purchases.

Knighten's organization was ultimately dismantled by the Federal Bureau of Investigation, using confidential human sources, a pole camera, search warrants, and wiretaps. Through a series of wiretaps, the FBI intercepted phone calls and text messages between Vontress and Knighten in which they coordinated drug transactions and organized funding for large drug purchases.

For example, the government intercepted a call between Knighten and Vontress during which they discussed buying fifteen-to-twenty pounds of methamphetamine. During that call, Vontress said he had $43,000, but Knighten noted they needed $48,600 for the deal. After this call, Knighten texted various subordinates, telling them to bring cash to Vontress's house.

Then Knighten texted Vontress and told him to count out the $48,600. The government also intercepted messages between Knighten and his subordinates that confirmed they bought the methamphetamine and moved it to their stash houses.

Based on the intercepted calls and messages, the government executed a search warrant at Vontress's home. When the officers approached his home, Vontress fled out his backdoor, tossing bags of cocaine as he ran. A Wichita police drone recorded Vontress absconding. While searching the house, the government found two handguns. With this evidence, the government began preparing to indict Vontress and other members of the organization.

## II. Procedural Background

### A. District Court Proceedings

The government charged twenty-four members of Knighten's organization in a fifty-five-count indictment. The indictment charged Vontress with three conspiracy counts under 21 U.S.C. § 846 for the organization's distribution of methamphetamine, heroin, and cocaine. The government also charged Vontress with maintaining a drug-involved premises (§ 856(a)), possession with intent to distribute a controlled substance (§ 841(a)(1) and (b)(1)(C)), possession of a firearm in furtherance of a drug-trafficking crime

(18 U.S.C. § 924(c)(1)), and two counts of using a communication facility to facilitate a drug-trafficking crime (21 U.S.C. § 843(b)).[†]

The government promptly arrested Vontress, and he had his initial appearance. During the next several months of discovery, the government produced 60,000 intercepted phone-call recordings and messages, 10,000 hours of pole-camera footage, police reports, downloads from search-warrant-seized phones, drone video, search-warrant photos and reports, arrest interviews, lab results, and firearm reports. After reviewing the discovery, Vontress moved to suppress the wiretap evidence.[‡] The motion asserted that the first wiretap lacked authorization from a high-level Department of Justice official, as required by the governing statutory scheme, 18 U.S.C. §§ 2510–20. The district court denied Vontress's motion. *United States v. Lewis*, Nos. 20-10028-11, -15, -19, 2022 WL 486913, at *11–12 (D. Kan. Feb. 17, 2022).

Before trial, twenty-two defendants pleaded guilty, which left Vontress and one of his codefendants, Kevin Lewis, as the two remaining candidates for trial. At the ensuing trial, the evidence against Vontress included the FBI's intercepted calls and messages, the drone video, and testimony from another codefendant, Trevor Wells. Wells, who pleaded guilty and agreed to testify for

[†] The government later added charges in a superseding indictment, but the charges against Vontress did not change.

[‡] Knighten moved to suppress the wiretap evidence, and Vontress joined Knighten's motion.

the government, said that he knew Vontress all his life. Wells described the various roles different members played in the organization and testified that he would bring money to Vontress "[b]ecause [Vontress] knew who to pay." R. vol. 6, at 712.

The jury convicted Vontress and Lewis on all counts. At sentencing, the district court calculated Vontress's total offense level as 38 and determined that his insignificant criminal history placed him in a category of I. The district court sentenced Vontress to 295 months' imprisonment—235 months for the drug offenses and 60 consecutive months for the firearm charge. Vontress timely appealed, and we have jurisdiction under 28 U.S.C. § 1291.

### B. Appellate Proceedings

We originally consolidated Vontress's appeal with the appeals of his codefendants Kevin Lewis and Otis Ponds.[§] Consolidating the appeals gave Vontress access to Lewis's presentence report, which was included in the appellate record. Lewis's PSR reveals that he tried to hire a confidential source to kill Vontress before trial. According to the PSR, Lewis discussed killing Vontress a dozen times during a two-month period. The PSR also notes that Lewis and Wells tried to hire a different confidential source to kill several other codefendants, but that source didn't name Vontress as a potential target.

[§] Ponds pleaded guilty, and his agreement reserved his right to an appeal.

At Lewis's sentencing, an FBI agent testified about the PSR to support the government's proposed obstruction-of-justice adjustment.[**] The agent summarized interviews with two informants who were approached by Lewis. The first informant, Sajcha Hobbs, told the agent that Vontress was among the people Lewis "believed were providing information to the Government," and so Lewis wanted to have Vontress killed. R. vol. 6, at 2098. The agent testified that Lewis offered Hobbs "$5,000 to take care of" Vontress. *Id.* at 2096. Lewis also allegedly told Hobbs that Lewis wanted Vontress "floating in the Arkansas River." *Id.* at 2099.

The second informant, James Hayes, relayed to the agent that Lewis and Wells gave him a list of people they wanted killed. Vontress was not on this list. The agent testified that, according to Hayes, Lewis and Wells wanted these people killed to prevent them from testifying and as retaliation for suspected cooperation with the government.[††]

After discovering this information, Vontress moved to have his opening brief sealed. We granted that motion and severed Vontress's appeal from

---

[**] Lewis's sentencing transcript was part of the consolidated record on appeal. The district court held Lewis's sentencing on the morning of June 22, 2023, but the obstruction-of-justice testimony took longer than the district court anticipated. So the district court continued Lewis's sentencing to June 30. On the afternoon of June 22, after hearing Lewis's plot to have Vontress killed, the district court sentenced Vontress.

[††] Based on this testimony, the district court applied the obstruction-of-justice adjustment against Lewis.

Lewis's and Ponds's. Before oral argument, we ordered the courtroom sealed, and we took under advisement Vontress's request to seal the oral argument recording and to issue a decision using pseudonyms and under a different case number.

Before oral argument, Vontress moved to supplement the record on appeal with Wells's proffer, a cover letter for discovery produced by the government, an informant's report about Lewis's attempts to have Vontress killed, and an affidavit from Vontress's trial counsel. We denied the motion.

## DISCUSSION

Vontress challenges his conviction on three grounds. First, he argues that the government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose that Lewis and Wells were trying to have their codefendants killed. Second, he argues that his plea offer should be reinstated under *Lafler v. Cooper*, 566 U.S. 156 (2012), and *Missouri v. Frye*, 566 U.S. 134 (2012). Third, he argues that the wiretap evidence should be suppressed because the first wiretap lacked authorization. We consider each in turn.

### I. *Brady* Violation

Vontress contends that the government violated *Brady* by failing to disclose that Lewis and Wells conspired to have their codefendants killed (the murder-for-hire evidence). But he concedes that in the district court he didn't make a *Brady* objection. So we review for plain error. *United States v. Arellanes-Portillo*, 34 F.4th 1132, 1138 (10th Cir. 2022). Under plain-error

review, Vontress must show: "(1) error, (2) that is plain, (3) which affects [his] substantial rights, and (4) which seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (citation omitted).

To prove a *Brady* violation, Vontress must show that the prosecution suppressed evidence that was favorable and material to his defense. *United States v. Erickson*, 561 F.3d 1150, 1163 (10th Cir. 2009). Favorable evidence includes impeachment evidence and exculpatory evidence. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Evidence is material when there is a reasonable probability that its disclosure would have changed the outcome of the case. *United States v. Reese*, 745 F.3d 1075, 1083 (10th Cir. 2014). A defendant satisfies this standard when "the absence of the withheld evidence shakes our confidence in the guilty verdict." *Id.* (citation omitted). Vontress must prove a *Brady* violation by a preponderance of the evidence. *United States v. Durham*, 902 F.3d 1180, 1221 (10th Cir. 2018).

Vontress must prove that the government suppressed the murder-for-hire evidence. *See Smith v. Sec'y of N.M. Dep't of Corr.*, 50 F.3d 801, 824 (10th Cir. 1995) ("The first [*Brady*] element requires proof that the 'prosecution' suppressed or withheld the evidence in question."). Though Vontress has shown that the murder-for-hire evidence exists, he has not proved that the government suppressed this evidence. The record is silent on whether the government produced Hobbs's and Hayes's interview reports or otherwise told Vontress about the threats. And Vontress concedes in his reply brief that he doesn't

know whether the government produced the murder-for-hire evidence—he block-quotes an email from the government that says the evidence was included in Discovery Round 22, which he admits that he "never opened." Corrected Reply Br. at 4. Though Vontress allegedly learned about the murder-for-hire evidence for the first time on appeal, he still must prove that the government suppressed the evidence. *See Smith*, 50 F.3d at 824. On this record, we cannot conclude that the government did so.

Even if we assume that the government suppressed the murder-for-hire evidence, Vontress has not shown that it was favorable. To prove favorability, Vontress must show that the murder-for-hire evidence is either exculpatory or impeachment evidence. *See Strickler*, 527 U.S. at 281–82. Exculpatory evidence "tends to establish a criminal defendant's innocence." *Fontenot v. Crow*, 4 F.4th 982, 1066 (10th Cir. 2021) (cleaned up). To show his innocence of the conspiracy and substantive drug-related charges, the murder-for-hire evidence must "tend[] to establish" that Vontress did not join the conspiracy or possess drugs and guns. *See id.* But the murder-for-hire evidence merely shows that Lewis and Wells wanted Vontress killed so he could not incriminate them.‡‡ Rather than showing Vontress's innocence, the evidence tends to

‡‡ Vontress asserts that Wells, in addition to Lewis, tried to have him killed. We lack a sufficient record to determine whether Wells helped plot to kill Vontress. Lewis's PSR reflects that Lewis tried to have Vontress killed and that Lewis and Wells together tried to have others killed. Giving Vontress the

(*footnote continued*)

establish his guilt: to have enough incriminating information that his co-conspirators would want him "take[n] care of," Vontress likely was involved in the organization. R. vol. 6, at 2096.

Vontress also could not have used the murder-for-hire evidence to impeach Wells's testimony. *See* Irving Younger *The Art of Cross-Examination*, 1 (1976) (explaining that the purpose of an impeachment cross-examination is to "attack the credibility of the witness and persuade the jury . . . that the witness is not worth believing"). Wells testified that he personally delivered drug proceeds to Vontress. So to impeach that testimony, Vontress would have to give the jury a reason to discredit Wells. But the murder-for-hire evidence provides no such reason. The evidence shows that Wells wanted Vontress killed to prevent him from testifying. But this showing would have been unlikely to dissuade the jury from believing that Wells testified truthfully about delivering drug proceeds to Vontress. Because the murder-for-hire evidence would not exculpate Vontress or impeach Wells, we rule that the evidence is not favorable to Vontress.

But even if the murder-for-hire evidence was favorable, it is nevertheless immaterial. *See Reese*, 745 F.3d at 1083 (noting that evidence is material when it "shakes our confidence in the guilty verdict" (citation omitted)). Compared to

---

benefit of the doubt, we assume for the *Brady* analysis that Wells also tried to have Vontress killed.

the other trial evidence, Wells's hour-long testimony added little. Throughout the six days of evidence, the jury heard countless calls and messages where Vontress organized drug deals; the jury watched Vontress fleeing his house and tossing cocaine; and the jury saw the firearms seized from his house. Vontress cannot undermine the evidence of his own criminal conduct with Lewis's and Wells's actions, which were tangential to and occurred after Vontress committed the crimes. Our confidence in his convictions remains firm.

Rather than show how this evidence is favorable and material, Vontress makes six conclusory statements to support his *Brady* claim.[§§] But he fails to "advanc[e] reasoned argument[s]." *Reedy v. Werholtz*, 660 F.3d 1270, 1274 (10th Cir. 2011) (citation omitted). Vontress's brief does not identify his "contentions and the reasons for them, with citations to the authorities and parts of the record on which [he] relies."[***] *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (quoting Fed. R. App. P. 28(a)(8)(A)). His "cursory

---

[§§] These six arguments are (1) that he would have shown why Wells testified against Vontress but not Lewis; (2) that he would have confronted the government's theory at trial; (3) that he would have testified; (4) that he would have severed his trial from Lewis's; (5) that he would have accepted the government's plea offer; and (6) that at sentencing he would have explained why he did not accept the government's offer.

[***] For example, Vontress's argument that he would have testified at trial comprises one sentence of his brief: "Knowledge of the fact that both Mr. Lewis and Mr. Wells tried to kill [Vontress] would have changed not only Mr. Vontress' decision on whether to testify at trial but also many other decisions regarding his defense and relations with his co-defendant." Am. and Suppl. Op. Br. at 9.

statements, without supporting analysis and case law, fail to constitute the kind of briefing" needed for us to address his arguments. *Id.* at 1105. We decline to make his arguments for him.

For the reasons stated above, Vontress has failed to show a *Brady* violation. Because he has not shown error, we need not address the other elements of plain-error review.[†††]

## II. Reinstating Plea Offer

Vontress next argues that we should reinstate his plea offer under *Lafler v. Cooper*, 566 U.S. 156 (2012), and *Missouri v. Frye*, 566 U.S. 134 (2012). In support, Vontress claims that he received ineffective assistance of counsel because his counsel allegedly failed to open Round 22 of Discovery, which allegedly contained the murder-for-hire evidence. Vontress asserts that he would have accepted the government's plea offer had his counsel opened that discovery and relayed its contents to Vontress.

We routinely deny ineffective-assistance-of-counsel claims on direct review because we lack a record to evaluate defense counsels' decisions. *See*

[†††] In his reply brief, Vontress categorizes the government's alleged withholding of the murder-for-hire evidence as violations of the Equal Protection and Confrontation Clauses. Vontress neglects to analyze these clauses separately from his *Brady* arguments. Even if his reply brief can be read as making Equal Protection and Confrontation Clause claims, those are waived. *See United States v. Leffler*, 942 F.3d 1192, 1197 (10th Cir. 2019) ("[W]e generally do not consider arguments made for the first time on appeal in an appellant's reply brief and deem those arguments waived.").

*United States v. Galloway*, 56 F.3d 1239, 1240 (10th Cir. 1995) (en banc) ("[Ineffective-assistance-of-counsel] claims brought on direct appeal are presumptively dismissible, and virtually all will be dismissed."). This case is no exception—we cannot evaluate Vontress's claim on the merits because we do not know (1) whether the government produced the murder-for-hire evidence, (2) whether Round 22 of Discovery contained the evidence, or (3) whether Vontress's counsel failed to open the discovery. Because we cannot address the ineffective-assistance claim, we affirm Vontress's convictions. But for completeness, we turn briefly to *Frye* and *Lafler* to see whether those cases provide Vontress relief, as he claims.

*Frye* and *Lafler* discuss ineffective assistance of counsel during plea bargaining. In *Frye*, the defendant was charged with a felony for driving with a revoked license. 566 U.S. at 138. The prosecution offered a choice of two plea deals: plea to the felony with a ten-day recommended sentence, or plea to a misdemeanor with a ninety-day recommended sentence. *Id.* at 138–39. These offers were communicated to defense counsel, but counsel never relayed the offers to the defendant. *Id.* at 139. The defendant later pleaded guilty to the felony without an agreement and received a three-year sentence. *Id.*

The Supreme Court reaffirmed that the *Strickland* standard governs counsel's performance during the plea-bargaining process.‡‡‡ *Id.* at 148. The Court found that the defense counsel's performance was deficient because counsel failed to communicate the offer and considered whether that performance caused prejudice. *Id.* at 145, 147. The Court framed the prejudice inquiry as whether the defendant would have accepted the earlier offer absent deficient performance. *Id.* at 148. The Court ruled that, to prove the offer would have been accepted, a defendant must show a "reasonable probability" that (1) he would have accepted the original plea offer, (2) the prosecution would not have canceled it, and (3) the trial court would have accepted it. *Id.* at 147. The Court remanded the case because the defendant had not shown the second and third prongs of the reasonable-probability test. *Id.* at 150–51.

In *Lafler*, the Court addressed a slightly different scenario—where a defendant rejects a favorable plea offer and proceeds to trial. 566 U.S. at 161, 163. After applying the reasonable-probability test from *Frye*, the Court addressed "what constitutes an appropriate remedy" when a defendant rejects a plea offer and then receives "a more severe sentence" after trial. *Id.* at 170. The Court ruled that, depending on the circumstances of the case, a trial court should "exercise discretion in determining whether the defendant should

‡‡‡ Under *Strickland v. Washington*, a defendant must show "that counsel's performance was deficient" and that the "deficient performance" caused prejudice. 466 U.S. 668, 687 (1984).

receive" the plea-offer sentence, "the sentence he received at trial, or something in between."[§§§] *Id.* at 171.

*Frye* and *Lafler* do not provide us grounds to reinstate Vontress's plea offer. Even assuming that Vontress's counsel was deficient, Vontress has not shown a "reasonable probability" that he would have accepted the government's plea offer had he known about the murder-for-hire evidence. *See Frye*, 566 U.S. at 147. He claims that he declined the government's offer because he feared retaliation from his codefendants. But he has not explained why he would have changed his decision after learning that his fears were true. Instead, he says that he would have asked the government for protection, but he does not allege that the government would have agreed to provide it. We doubt that he would have pleaded guilty after learning that his fears were true and without guaranteed protection. Because Vontress has not shown a reasonable probability that he would have pleaded guilty, we need not "exercise discretion in determining whether" he should receive a lesser sentence. *Lafler*, 566 U.S. at 171.

[§§§] The Court also explained that if a plea offer "was for a guilty plea to a count or counts less serious than the ones for which a defendant was convicted after trial, or if a mandatory sentence confines a judge's sentencing discretion after trial," then the "proper exercise of discretion . . . may be to require the prosecution to reoffer the plea proposal." *Lafler*, 566 U.S. at 171.

## III. Wiretap Authorization

Vontress argues that we must reverse his conviction because the FBI's first wiretap lacked DOJ authorization. Vontress alleges that the signatures on the authorization memos differ from the name "Bruce Swartz," the Deputy Assistant Attorney General who authorized the wiretap. We address this identical issue on identical facts in the appeal taken by Vontress's codefendants Lewis and Ponds—the same appeal from which we severed Vontress's. *See generally United States v. Lewis*, Nos. 22-3125, 22-3126 (10th Cir. September 10, 2024). There, we hold that Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–20, the statute governing wiretaps, requires that the authorizing DOJ official be identified. *See generally Lewis*, Nos. 22-3125, 22-3126. In *Lewis*, we rule that the wiretap at issue—the same wiretap that Vontress challenges—was sufficiently authorized, and we decline to suppress any evidence derived from it. *Id.*

Likewise, we decline to suppress the wiretap used against Vontress. Vontress, Lewis, and Ponds were in the same wiretap-authorization boat. The government intercepted their calls from the same wiretaps, they moved to suppress the same wiretaps, and the district court denied their motions in the same order. *See United States v. Lewis*, Nos. 20-10028-11, -15, -19, 2022 WL 486913, at *1, *11–12 (D. Kan. Feb. 17, 2022). On appeal, Vontress makes the same wiretap-authorization arguments that we reject in *Lewis*, Nos. 22-3125, 22-3126. We thus consider the wiretap-authorization issue resolved. *See United*

*States v. Parada*, 577 F.3d 1275, 1280 (10th Cir. 2009) ("[W]hen a rule of law has been decided adversely to one or more codefendants, the law of the case doctrine precludes all other codefendants from relitigating the legal issue." (quoting *United States v. LaHue*, 261 F.3d 993, 1010 (10th Cir. 2001))). For the reasons discussed in *Lewis*, we affirm the denial of Vontress's motion to suppress the evidence derived from the wiretaps.

## CONCLUSION

We affirm Vontress's convictions. We order that Vontress's oral arguments be sealed. Because we have sealed this order and judgment, we decline to use a pseudonym and a different case number.

Entered for the Court

Gregory A. Phillips
Circuit Judge