

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 11, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRANDON JEROME SILAS,

Defendant - Appellant.

No. 25-5179
(D.C. No. 4:24-CR-00353-JDR-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, PHILLIPS**, and **FEDERICO**, Circuit Judges.

A jury convicted Brandon Jerome Silas of drug distribution resulting in death, four counts of using a communication facility to commit a drug trafficking felony, and laundering drug proceeds. He now challenges his distribution and trafficking convictions on the grounds that the district court admitted improper hearsay evidence during his trial. Exercising jurisdiction under 28 U.S.C. § 1291, we **AFFIRM**. Even assuming the challenged evidence was inadmissible, any error was harmless.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I. Background

When Keandre Boykin returned home from work shortly before 2:40 p.m. on February 16, 2022, he found his girlfriend, Haley Scruggs, unresponsive on the floor of his room. He performed CPR and called 911, but Scruggs's heart had stopped beating and EMTs could not revive her.

Boykin knew that Scruggs struggled with drug addiction, and he had been trying to convince her to stop using painkillers. But, tragically, drug paraphernalia near Scruggs's body suggested she had overdosed. And Scruggs's autopsy revealed a lethal concentration of fentanyl in her body and no other medical complications, leading the medical examiner to conclude that the cause of her death was fentanyl toxicity.

DEA investigators searched Scruggs's phone and identified several conversations referencing drugs. One of those conversations was an exchange of text messages with Silas on the day of Scruggs's death, in which Scruggs asked Silas to visit her and discussed getting "fakes"—a slang term for opioid pills. Supp. R., at 4. When Scruggs asked Silas if he had any fakes, Silas said he did not. The messages showed that Silas visited Scruggs at 12:14 p.m., and Silas later admitted to visiting Scruggs before her death. Despite having sent nearly one hundred text messages earlier in the day, Scruggs did not send a single message after Silas's arrival.

A subsequent DEA investigation into Silas turned up evidence that he was a prolific fentanyl dealer. A grand jury eventually indicted Silas on one count of distribution of fentanyl resulting in Scruggs's death under 21 U.S.C. §§ 841(a)(1) and

841(b)(1)(C), four counts of using a communication facility in the commission of a drug trafficking felony under 21 U.S.C. §§ 843(b) and 843(d)(1), and one count of money laundering under 18 U.S.C. § 1956(a)(1)(B)(i). The first communication-facility count alleged Silas used a telephone to accomplish the distribution that resulted in Scruggs's death. The other three communication-facility counts involve unrelated drug transactions with people other than Scruggs.

At trial, the government offered evidence including details of Silas's financial transactions, testimony from witnesses who recounted purchasing fentanyl from him, and screenshots and forensic evidence of conversations between Silas and his customers. Among those conversations was the exchange between Silas and Scruggs on February 16. The government also moved to admit screenshots of a conversation between Scruggs and an unknown woman on the same day. In that conversation, Scruggs tried to arrange a deal for Silas to make a bulk purchase of fentanyl pills from the woman. A DEA special agent testified that he believed Scruggs wanted to broker the deal in exchange for some drugs as a "finder's fee." R., Vol. II at 345–46.

Silas did not contest the government's effort to admit the bulk of those conversations, but he objected to two messages sent by Scruggs to the unnamed woman as inadmissible hearsay. In the first message, Scruggs said, "I been knowing him for like 8 years now he's kind of a older black guy that works at Boost mobile." Supp. R., at 10. In the second, she reported, "Man he just said his uncle hit em back and is gonna grab from him today. I'm sorry to do that shit to you that makes me

mad. But he sells through 100 in a day or two so he said he gonna lmk when he needs more[.]” Supp. R., at 10.

According to Silas, these messages amounted to an assertion by Scruggs that “Mr. Silas is a drug dealer, and he’s bringing me drugs.” R., Vol. II at 299. The government countered that the messages were not hearsay because it was offering them as proof that a “negotiation is occurring,” not for their truth. R., Vol. II at 298. Or, even if the messages were hearsay, the government argued they fell within the exceptions for statements against interest, statements of the declarant’s then-existing state of mind, or as present sense impressions. The district court overruled Silas’s objection because the messages were “as much as anything, . . . some type of negotiation” between Scruggs and the woman. R., Vol. II at 300–01. That statement suggests the district court believed the messages were not hearsay.

Upon the trial’s conclusion, the jury convicted Silas on all charges.

II. Discussion

Silas renews his hearsay challenge to the second text message on appeal. He argues that the message goes directly to his guilt because the primary dispute at trial was over whether he gave Scruggs the drugs that killed her. And, taken for its truth, the message suggests that Silas, who was on his way to see Scruggs, had obtained drugs from his uncle and no longer needed them from the unidentified supplier. According to Silas, the implication that he had fentanyl when he visited Scruggs—despite previously telling her he had none—severely undermined his defense. So he

asks us to reverse his convictions and remand for a new trial that excludes the allegedly improper evidence.

We need not decide the merits of Silas’s hearsay challenge because, even assuming the message was inadmissible, any error was harmless. “When a defendant objects to a district court’s admission of hearsay based solely on the Federal Rules of Evidence, we apply the nonconstitutional harmless error standard.” *United States v. Blechman*, 657 F.3d 1052, 1067 (10th Cir. 2011) (citation modified). “Under that standard, ‘[a] harmless error is one that does not have a substantial influence on the outcome of the trial; nor does it leave one in grave doubt as to whether it had such effect.’” *Id.* (alteration in original) (quoting *United States v. Collins*, 575 F.3d 1069, 1073 (10th Cir. 2009)). To determine whether an error was harmless, we review the record de novo and consider the “context, timing, and use of the erroneously admitted evidence at trial and how it compares to properly admitted evidence.” *Id.* (quoting *United States v. Hanzlicek*, 187 F.3d 1228, 1237 (10th Cir. 1999)). The government has the burden of proving a nonconstitutional error was harmless. *Id.*

Without conceding error, the government argues the text message did not have a substantial influence on the trial’s outcome. First, it says the government put on ample evidence that Silas was a drug dealer. We agree. The trial record is packed with forensic evidence about Silas’s financial transactions and conversations with customers. And it includes testimony from individuals who purchased drugs from Silas and experts who stated that his activities aligned with narcotics trafficking. The

copious physical and testimonial evidence that the government offered was more than enough for the jury to decide Silas was an active drug dealer.

Next, the government says an unchallenged text message was sufficient evidence that Silas had secured an alternative source of drugs on the morning of Scruggs's death. That is also true. As Scruggs's effort to broker a deal between Silas and the unknown potential supplier was faltering, Scruggs told Silas, "Lol of course she said she would do \$100 for 10 [pills] but *I know you already got it.*" Supp. R., at 29 (emphasis added). Silas did not object to that message below, and he does not challenge its admission on appeal. The jury therefore had the same information about Silas's access to fentanyl in an unchallenged form. As a result, even if the challenged message was inadmissible, it "was cumulative of other properly admitted evidence" and "is less likely to have injuriously influenced the jury's verdict." *United States v. Clifton*, 406 F.3d 1173, 1179 (10th Cir. 2005) (quoting *Wray v. Johnson*, 202 F.3d 515, 526 (2d Cir. 2000)).

Finally, the government points out that it thought so little of the challenged message's probative value that it did not mention the message in its closing argument. That is relevant because when "the parties do not mention the improper evidence in closing argument, the evidence is less likely to affect the outcome." *United States v. Griffith*, 65 F.4th 1216, 1220 (10th Cir. 2023) (citing *United States v. McHorse*, 179 F.3d 889, 902–03 (10th Cir. 1999)). Our review of the record confirms the government's account. The sole reference to the message at trial—other than the conversation at the bench about its admissibility—is during the

government's direct examination of the DEA agent who investigated Scruggs's death. *See R.*, Vol. II at 356. The government did not discuss the message again, despite referencing other portions of Scruggs's conversations during its closing argument. A single reference to the message in one witness's testimony during a complex, multi-day trial is unlikely to substantially influence the outcome.

After considering the context, timing, and use of the challenged message at trial, we are convinced that it had little if any impact on the outcome. The jury had ample, properly admitted evidence for the same propositions that Silas claims the challenged message stands for. The government referenced the message only once, and solely for the proposition that Scruggs was "keeping the deal [between Silas and the unknown supplier] potentially open." *R.*, Vol. II at 356. Not for the allegedly improper uses that Silas claims. And the record contains sufficient, indeed overwhelming, physical and testimonial evidence to support the jury's verdict. *Cf. United States v. Perez*, 989 F.2d 1574, 1583–84 (10th Cir. 1993) (en banc) (holding an erroneous admission of hearsay statements was harmless because the evidence of the defendant's guilt was "overwhelming"). So even assuming that admitting the message was error, the error was harmless.

III. Conclusion

For the foregoing reasons, we affirm the district court's judgment.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge