NOT RECOMMENDED FOR PUBLICATION

No. 23-3752

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE NORTHERN DISTRICT OF
JOHN MICHAEL EVERSON,	)	OHIO
	)	
Defendant-Appellant.	)	

O R D E R

Before: SUTTON, Chief Judge; McKEAGUE and MATHIS, Circuit Judges.

John Michael Everson, a federal prisoner, appeals his convictions and sentence following a jury trial. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons set forth below, we affirm.

In 2018, Everson was indicted on four counts of tax evasion, covering tax years 2012 through 2015, in violation of 26 U.S.C. § 7201. The evidence adduced at trial showed that Everson, an electrical engineer, left his salaried job at Toledo Transducers, Inc. in 1998 to begin working as an independent contractor. Around that time, Everson created the Sozo Services Management Trust (Sozo Services) to bill his clients and receive payments. Between 2009 and 2016, Sozo Services' bank account received more than $3.2 million in payments for contract work generated by Everson's business. Yet, apart from two $50 money orders submitted to the IRS in 2014 and 2015, Everson did not file tax returns or pay any federal income taxes during those years.

Everson also created another trust, the Elim Hill Fellowship Trust, and moved money from Sozo Services into that entity's bank account. He used some of that money to make more than $500,000 in cash withdrawals and to buy hundreds of thousands of dollars in precious metals and

foreign currency. Everson never filed tax returns for the Elim Hill Fellowship Trust. Everson employed two of his sons, Luke and Nathaniel, and paid them by funneling money from Sozo Services through the Elim Hill Fellowship Trust before moving those funds into bank accounts of entities his sons created—GIATE Ministries for Luke and Clear Sky Ministries for Nathaniel. Like their father, neither son filed tax returns during this period. In addition, Everson purchased a single-engine airplane in 2011 in the name of a trust whose trustee was Everson's mother-in-law, and he transferred his personal residence by quitclaim deed to the Elim Hill Fellowship Trust in 2012.

At the close of the government's case-in-chief, Everson unsuccessfully moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. Everson then testified, putting forth a theory that he had a good-faith belief that he was not required to file tax returns or pay federal income taxes. The district court denied Everson's renewed motion for a judgment of acquittal at the close of all evidence. Following deliberations, the jury acquitted Everson of the charge pertaining to tax year 2012 but convicted him on all other counts.

The presentence report calculated a total offense level of 24 after applying two sentence enhancements, including a two-level leadership enhancement under USSG § 3B1.1(c). This total offense level of 24, coupled with Everson's criminal history category of I, yielded an advisory guidelines range of 51 to 63 months of imprisonment. The district court sentenced Everson to 30 months in prison, to be followed by two years of supervised release. It also ordered him to pay $301,183 in restitution.

Everson now appeals, arguing that (1) his convictions were supported by insufficient evidence, (2) the cumulative effect of multiple errors rendered his trial fundamentally unfair, and (3) his sentence is procedurally unreasonable.

We review the sufficiency of the evidence de novo, asking "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Collins*, 799 F.3d 554, 589 (6th Cir. 2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). When assessing

the sufficiency of the evidence, "[w]e do not weigh the evidence, assess the credibility of witnesses, or substitute our judgment for that of the jury." *United States v. Rosales*, 990 F.3d 989, 994 (6th Cir. 2021) (quoting *United States v. Smith*, 749 F.3d 465, 477 (6th Cir. 2014)). "Circumstantial evidence alone can be sufficient to sustain a conviction, even if it does not remove every possibility besides that of guilt." *Id.*

To sustain a conviction for tax evasion under § 7201, the government must prove (1) the existence of a tax deficiency, (2) willfulness, and (3) an affirmative act constituting an evasion or attempted evasion. *United States v. Gross*, 626 F.3d 289, 293 (6th Cir. 2010) (citing *Boulware v. United States*, 552 U.S. 421, 424 n.2 (2008)). Everson takes aim at the second element, arguing that his failure to pay his federal income taxes was not willful because he genuinely believed, based on his own "extensive research" of the tax code, that he was not required to do so.

In criminal tax cases, "the standard for the statutory willfulness requirement is the 'voluntary, intentional violation of a known legal duty.'" *Cheek v. United States*, 498 U.S. 192, 201 (1991) (quoting *United States v. Pomponio*, 429 U.S. 10, 12 (1976)). To prove willfulness, the government must "prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty." *Id.* Satisfying "this burden requires negating a defendant's claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws." *Id.* at 202. "The defendant's belief or misunderstanding need not be objectively reasonable, and whether it was held in good faith should be determined by the fact-finder." *United States v. Aaron*, 590 F.3d 405, 408 (6th Cir. 2009) (citing *Cheek*, 498 U.S. at 202-03).

The evidence amply supports the jury's finding that Everson voluntarily and intentionally violated his known legal duty to pay taxes for calendar years 2013, 2014, and 2015. The parties do not dispute that Everson had tax liabilities for those calendar years, and the government proved that Everson was aware of his legal obligation to pay taxes by introducing evidence that he had filed tax returns and paid federal income taxes when he worked for Toledo Transducers, Inc. *See*

United States v. Woodman, 115 F. App'x 840, 843 (6th Cir. 2004) (holding that evidence that a defendant filed taxes in previous years can establish knowledge of the legal obligation); *United States v. Daniel*, 956 F.2d 540, 543 (6th Cir. 1992) (same). Additionally, although Everson stopped filing his own tax returns in 1998, Everson's brother testified that Everson prepared their mother's tax returns between approximately 2004 and 2018, further indicating that he was aware of the federal tax code's requirements. And a rational trier of fact could infer Everson's willful intent from his attempts to conceal his income, including directing his clients to make payments to Sozo Services, funneling money from Sozo Services to other entities controlled by him and his sons, withdrawing large amounts of money from one of those entities and using some of that money to purchase valuable commodities, and placing personal assets in the name of nominees. *See United States v. Rozin*, 664 F.3d 1052, 1059 (6th Cir. 2012) ("Willfulness may be established by evidence that is 'entirely circumstantial.'" (quoting *United States v. Fawaz*, 881 F.2d 259, 265 (6th Cir. 1989))).

Viewing this evidence in the light most favorable to the government, a rational jury could conclude beyond a reasonable doubt that Everson willfully evaded the payment of federal taxes during tax years 2013, 2014, and 2015. Everson maintains that he held a "subjective good faith belief that he was compliant with the tax code . . . based upon his own extensive research," but he made this same argument to the jury, which rejected it in reaching its guilty verdicts. We must defer to the jury's determination of the weight of the evidence and the credibility of the witnesses, and to the jury's choice of the competing inferences that can be drawn from the evidence. *See Smith*, 749 F.3d at 477. So we reject Everson's argument that the evidence was insufficient to sustain his convictions.

Everson next claims that the cumulative effect of four individually harmless errors allegedly committed at his trial deprived him of his constitutional right to a fair trial. "We acknowledge that '[e]rrors that might not be so prejudicial as to amount to a deprivation of due process when considered alone, may cumulatively produce a trial setting that is fundamentally unfair.'" *United States v. Hernandez*, 227 F.3d 686, 697 (6th Cir. 2000) (alteration in original)

(quoting *Walker v. Engle*, 703 F.2d 959, 963 (6th Cir. 1983)). "In order to obtain a new trial based upon cumulative error, a defendant must show that the combined effect of individually harmless errors was so prejudicial as to render his trial fundamentally unfair." *United States v. Trujillo*, 376 F.3d 593, 614 (6th Cir. 2004) (citing *United States v. Parker*, 997 F.2d 219, 221 (6th Cir. 1993)). We address each of Everson's alleged errors in turn.

Everson first argues that the district judge should have sua sponte recused himself because he was casually acquainted with one of the government's witnesses, David Kaiser. Before trial, the district judge notified the parties that his 21-year-old son had made "a short documentary film" about Kaiser's religious ministry for a project when he was in high school, and that the documentary later won an award in a local film contest. The district judge informed the parties that he met Kaiser briefly only "once or twice" during that time, that he has not seen Kaiser since, and that he does not "have a particular position one way or another about him." Under 28 U.S.C. § 455(a), a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." We have defined this to mean that "a judge must recuse [himself] if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990). But where, as here, a judge's relationship with a witness is "merely that of an acquaintance, not an intimate, personal relationship or a relationship in which [the judge] would be obligated [to that individual]," recusal is not necessary. *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *see United States v. Lovaglia*, 954 F.2d 811, 816-17 (2d Cir. 1992) (holding that recusal was not required where the case involved a family whom the district judge had known personally seven or eight years earlier). Accordingly, the district judge did not err in failing to sua sponte recuse himself under § 455.

Second, Everson argues that the district court erred in allowing the government to present irrelevant evidence about his sons' "financial matters." We review a district court's evidentiary rulings for abuse of discretion. *United States v. Underwood*, 859 F.3d 386, 392-93 (6th Cir. 2017). A district court abuses its discretion "when it relies on clearly erroneous findings of fact, uses an

erroneous legal standard, or improperly applies the law." *United States v. Dado*, 759 F.3d 550, 559 (6th Cir. 2014) (quoting *United States v. White*, 492 F.3d 380, 408 (6th Cir. 2007)).

"The standard for relevancy is 'extremely liberal.'" *United States v. Whittington*, 455 F.3d 736, 738 (6th Cir. 2006) (quoting *Douglass v. Eaton Corp.*, 956 F.2d 1339, 1344 (6th Cir. 1992)). "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. "In a criminal case, a fact is 'of consequence' if it makes it more or less likely that the defendant committed the charged conduct." *United States v. Hazelwood*, 979 F.3d 398, 409 (6th Cir. 2020) (quoting Fed. R. Evid. 401(b)).

The indictment alleged that Everson "willfully attempted to evade and defeat income tax due and owing by him to the United States of America" for tax years 2012 through 2015 by, among other tactics, "using sham trusts controlled by [him] to receive, conceal, and use income." The government presented evidence at trial that Everson employed two of his sons, Luke and Nathaniel, and paid them by routing money through Sozo Services to each son's nominee entity. This evidence directly concerned the charged conduct—tax evasion—and therefore made it more likely that Everson committed that conduct. *See United States v. Stuckey*, 253 F. App'x 468, 482 (6th Cir. 2007). The district court did not abuse its discretion in determining that the evidence was relevant.

Under the Federal Rules of Evidence, relevant evidence is admissible unless another rule says otherwise. Fed. R. Evid. 402. One exception is for so-called "other acts" evidence: "Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). To the extent Everson contends that the evidence regarding his sons' "financial matters" should have been excluded under Rule 404(b), his argument fails because Rule 404(b) does not apply when "the challenged evidence is 'inextricably intertwined' with evidence of the crime charged," *United States v. Everett*, 270 F.3d 986, 992 (6th Cir. 2001) (quoting *United States*

v. Barnes, 49 F.3d 1144, 1149 (6th Cir. 1995)), or when the acts are "intrinsic," or "part of a continuing pattern of illegal activity," *Barnes*, 49 F.3d at 1149.

Third, Everson argues that the district court erred by denying his motion for a mistrial based on his belief that some jurors may have seen an allegedly prejudicial photograph that was not admitted into evidence. *See United States v. Wellman*, 26 F.4th 339, 352 (6th Cir. 2022) (noting that we review the denial of a mistrial motion for abuse of discretion). Due to the district court's COVID-19 social distancing requirements, five members of the jury panel sat in the front of the courtroom gallery instead of the jury box. A photograph taken during the execution of a search warrant of Everson's house—depicting several legally owned firearms in a cabinet—was inadvertently displayed on video monitors that were visible to the gallery. The parties had earlier agreed to crop out the firearms when displaying the photograph, but the photograph that was displayed on the gallery monitors was unredacted. Everson asserts that the unredacted photograph was overly prejudicial because "it allowed the government to reinforce the impression that he was a religious . . . and violent zealot." But Everson simply assumes that the jurors in the gallery saw the photograph while it was briefly displayed on the monitors. *See United States v. Moore*, 641 F.3d 812, 829 (7th Cir. 2011) ("[S]peculation alone is insufficient to trigger a mistrial."). And even if those jurors saw the photograph, the district court immediately instructed the jury that it could base its decision regarding Everson's guilt or innocence only on properly admitted evidence. It also instructed the jurors seated in the gallery "to disregard anything that [they] may have otherwise seen on those monitors." Jurors are presumed to follow curative instructions, *United States v. Moreno*, 933 F.2d 362, 368 (6th Cir. 1991), "and any possible prejudice resulting from the [juror's seeing the photograph] was promptly and thoroughly remedied by the court's explicit instructions," *United States v. Sherrills*, 432 F. App'x 476, 484 (6th Cir. 2011). We discern no abuse of discretion in the district court's denial of Everson's motion for a mistrial.

Fourth, Everson argues that the district court abused its discretion in refusing to grant a mistrial when the government allegedly violated his Fifth Amendment rights by eliciting testimony that he exercised his right to remain silent during an IRS audit. But we need not address this

argument because "[t]he existence of only one error . . . eliminates the foundation of [Everson's] cumulative-effect theory." *United States v. Bankston*, 820 F.3d 215, 234 (6th Cir. 2016). Stated differently, Everson's cumulative-error claim fails because there is no cumulation of errors. *See id.* at 234-35 (denying a due process claim based on the cumulative-effect argument because the defendant "cannot establish any errors to cumulate" (quoting *Baze v. Parker*, 371 F.3d 310, 330 (6th Cir. 2004))).

Lastly, Everson claims that the district court improperly calculated his guidelines range by misapplying the leadership enhancement under § 3B1.1(c), which instructs sentencing courts to increase a defendant's offense level by two "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity." In determining whether a defendant is an organizer, leader, manager, or supervisor in any criminal activity, courts should consider

> the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

USSG § 3B1.1, cmt. n.4. Generally, a "defendant must have exerted control over at least one individual within a criminal organization for the enhancement . . . to be warranted." *United States v. Gort-DiDonato*, 109 F.3d 318, 321 (6th Cir. 1997). The government bears the burden of proving that the enhancement applies by a preponderance of the evidence. *United States v. Martinez*, 181 F.3d 794, 797 (6th Cir. 1999). We review the decision to impose a leadership enhancement under § 3B1.1 deferentially because it raises a fact-intensive question. *United States v. Washington*, 715 F.3d 975, 983 (6th Cir. 2013).

The record contains considerable evidence of Everson's leadership role. The government presented evidence that when Everson's son Luke applied for a job with a commercial cabinet business in 2009, Everson and Luke together persuaded the owner to pay Sozo Services rather than paying Luke directly and reporting his wages on W-2 tax forms. And the government also established that Everson routinely funneled unreported income from Sozo Services to the Elim Hill Fellowship Trust, and then to the entities created by Luke and Nathaniel. *See United States*

v. Naranjo-Rosario, 871 F.3d 86, 99 (1st Cir. 2017) (upholding application of the § 3B1.1(c) enhancement where the defendant was "in control over the receipt and distribution of the money"). In view of this evidence, the district court properly determined that Everson qualified for the two-level leadership enhancement under § 3B1.1(c).

For these reasons, we **AFFIRM** Everson's convictions and sentence.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 08/12/2024.

Case Name: USA v. John Everson
Case Number: 23-3752

Docket Text:
ORDER filed: We AFFIRM Everson's convictions and sentence. Mandate to issue, decision not for publication, pursuant to FRAP 34(a)(2)(C). Jeffrey S. Sutton, Chief Circuit Judge; David W. McKeague, Circuit Judge and Andre B. Mathis, Circuit Judge.

The following documents(s) are associated with this transaction:
Document Description: Order

Notice will be sent to:

Mr. John Michael Everson
P.O. Box 880
Napoleon, OH 43545

A copy of this notice will be issued to:

Ms. Katie Bagley
Mr. Christopher C. Bazeley
Mr. Gene Crawford
Mr. Mark Sterling Determan
Mr. Samuel Robert Lyons
Ms. Sandy Opacich
Mr. Joseph Brian Syverson