IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-13674-C

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN DAVID MELTON,
Defendant-Appellant.

On appeal from the United States District Court
for the Southern District of Georgia
No. 4:20-CR-00081-RSB-BKE

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There are no publicly traded corporations to disclose.

STATEMENT REGARDING ORAL ARGUMENT

The government does not request oral argument. The facts and legal arguments are adequately presented in the brief and record, and the decisional process would not be significantly aided by oral argument. *See* Fed. R. App. P. 34(a)(2)(C); 11th Cir. R. 34-3(d).

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STATEMENT OF THE ISSUES

1. Whether sufficient evidence supported Defendant's conviction for violating Section 1 of the Sherman Act.

2. Whether the district court acted within its discretion in denying Defendant's motion for a new trial.

3. Whether the district court correctly denied Defendant's motion to dismiss the indictment based on alleged error in the way the grand jury was constituted under COVID-era protocols.

INTRODUCTION

For half a decade, Defendant John David Melton ("Melton"), his brother, Defendant Gregory Hall Melton ("Greg"), and others conspired to fix prices, rig bids, and allocate markets for the sale of ready-mix concrete in the greater Savannah, Georgia area. Over a four-day trial, the government presented powerful evidence of guilt, including (*inter alia*) testimony from a whistleblower and a coconspirator, and twenty-five audio recordings of the conspirators conducting the conspiracy in real time. Based on this evidence, the jury found both brothers guilty of violating Section 1 of the Sherman Act.

Melton now seeks to overturn his conviction, but his arguments lack merit. First, the evidence, which the district court itself described as "overwhelming," (Doc.556:1-2),[1] readily sufficed to show the existence of an agreement to fix prices, rig bids, or allocate markets. Second, the district court acted within its discretion in denying Melton's motion for a

[1] "Doc." refers to district-court docket entries, "GX" to government exhibits. Government exhibits are appended to the Exhibit and Witness List. (Doc.503).

new trial, where Melton showed neither error in the court's admission of evidence that the conspirators believed their conduct to be illegal, nor that the court's limiting instructions—whose sufficiency Melton had acknowledged at trial—failed to adequately guard against any risk of unfair prejudice. And third, as Melton concedes, *United States v. Graham*, 80 F.4th 1314 (11th Cir. 2023), forecloses his attack on the validity of his indictment. This Court should affirm his conviction.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

On September 2, 2020, a grand jury returned a four-count indictment against Melton, Greg, James Clayton Pedrick ("Pedrick"), Timothy Tommy "Bo" Strickland ("Strickland"), and Evans Concrete, LLC ("Evans"). (Doc.1). Count One charged the defendants with a "per se" violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. (*Id.* ¶¶ 1-2). Specifically, Count One alleged that, from at least 2010 through at least July 2016, the defendants and their coconspirators—including, among others, ARGOS USA LLC, Elite Concrete LLC, and Coastal Concrete

Southeast II[2]—conspired to fix prices, rig bids, and allocate markets for sales of ready-mix concrete in the Southern District of Georgia and elsewhere. (*Id.*). Counts Two and Three charged Pedrick and Strickland, respectively, with false statements, in violation of 18 U.S.C. § 1001. (*Id.* ¶¶ 20-25). Count Four charged Strickland with perjury, in violation of 18 U.S.C. § 1621(1). (*Id.* ¶¶ 26-28).

Pedrick, Strickland, and Evans pleaded guilty to Count One. (Doc.384:2-3, Doc.440:2-3, and Doc.442:2-3, respectively).

Melton and Greg went to trial on Count One, and the jury found both guilty as charged. (Doc.501). The district court sentenced Melton to 26 months' imprisonment, three years of supervised release, and a $10,000 fine. (Doc.579:32-36; Doc.565). This appeal ensued.[3]

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[2] The indictment referred to these coconspirators as "Company-1," "Company-2," and "Company-3," respectively. *Id.*

[3] The district court sentenced Greg to 41 months' imprisonment, three years of supervised release, and a $50,000 fine. (Doc.564). Greg did not notice an appeal.

B. Statement of the Facts

1. The competitors

From 2010 through late 2015, the Melton brothers worked at rival ready-mix concrete companies. (Doc.508:170-72; Doc.509:22, 29-30). Greg was Division Manager of the Savannah Division of Argos Concrete ("Argos"),[4] a company that manufactured and sold concrete—a mixture of sand, aggregate, and cement. (Doc.509:14-26). Argos was a "very large, . . . very powerful" company that operated throughout the United States and in foreign countries; it was the third largest concrete producer in the world. (*Id.* at 18). The company's Savannah Division did business in an area "from Brunswick, Georgia, up through Richmond Hill, [Georgia,] through Savannah, [Georgia,] into Hilton Head, [South Carolina,] into Statesboro[, Georgia]." (Doc.509:22-28; GX266 (territory map); Doc.508:168). Greg had pricing authority in this area. (Doc.509:29).

Melton was general manager of Elite Concrete LLC ("Elite"), a ready-mix concrete company in Savannah, Georgia. (Doc.510:25-26). Elite was "tiny" compared to Argos, but Elite sold concrete in the same area as Argos's Savannah Division, making it one of Argos's "primary competitors" there. (Doc.509:29-33; Doc.508:169-70). Elite was owned by

Trey Cook and Troy Baird. (Doc.509:67-68). Melton was "the guy [who] knew concrete, and he ran their concrete company" and had "a lot of input" on pricing. (Doc.510:26).

Argos's and Elite's other main competitors in the Savannah area were Evans, which was owned by Strickland; Coastal Concrete Southeast II ("Coastal"), which was co-owned by Tim Coughlin; and Mayson Concrete, which was co-owned by Mark Turner. (Doc.508:170-72; Doc.509:29-32, 104).

These companies sold concrete primarily to contractors and concrete "finishers"—firms that "take concrete in its . . . liquid form and mold it into" a driveway, floor, curb, or gutter—but also to "home buyers" and "regular people." (Doc.509:14-15, 20; Doc.508:164). The average size of a residential job was about 60 cubic yards. (Doc.509:15-17). Commercial jobs averaged several hundred cubic yards, but they could range up to 2,000 cubic yards for a shopping mall or apartment complex, or over 50,000 cubic yards for highways or tilt warehouses. (*Id.*). Whether the job was residential or commercial, customers decided which concrete company to hire based on price. (*Id.*).

2. The genesis of the conspiracy

In roughly 2000, Melton—who had worked for Argos's predecessor, LaFarge, in Atlanta—became general manager of LaFarge's Savannah Division, whose office was in Pooler, Georgia. (Doc.510:23-24). While there, Melton became friends with Pedrick, a salesman for the company's cement division who shared the Pooler office space with the concrete staff. (*Id.* at 18-20, 24-25). When Melton left for Elite in about 2007, Greg—who likewise had worked for LaFarge in Atlanta—replaced him. (*Id.* at 28-29; Doc.509:21).

In late 2009 or early 2010, Chris Young ("Young") became the Savannah Division's sales manager. (Doc.509:12-13, 17). Young, too, came from Blue Circle/LaFarge's Atlanta office, where he had worked since 1997. (*Id.* at 12). As sales manager of the Savannah Division, Young reported to Greg, whose office was "right across" from his, and managed the concrete sales staff, including Jason Townsend ("Townsend") and Hugh Papy ("Papy"). (*Id.* at 17-22). Among Young's performance indicators were volume and "average sales price," a metric LaFarge (and then Argos) tracked monthly. (*Id.* at 19, 24). Average sales price was a

"big" factor in determining both Young's and Greg's annual bonuses. (*Id.* at 23-25).

"[V]ery early on," Young "started witnessing some things . . . that concerned [him], for [him] and for [his] family and [his] ability to do [his] job." (Doc.509:22, 35). Specifically, soon after Young arrived, Pedrick invited him to "meet the competitors." (*Id.* at 35). (As a cement salesman, Pedrick regularly "call[ed] on" area concrete companies, which were his customers or potential customers. (Doc.510:18, 27-28)). When Young declined, saying he "wasn't comfortable with that," Pedrick told him what Pedrick thought was a "funny" story: that, before Young's arrival, "[Pedrick], Greg Melton and David Melton had a three-way call to write each other's price increase letters," (Doc.509:35.)—letters notifying customers that "the price [i]s going to be increased at a certain date," (Doc.508:175). This "raised a red flag" for Young, because he had long received antitrust-compliance training and "didn't want to go to jail [for]

being a part of something that the training . . . all of us had been through[5] . . . said was illegal." (Doc.509:35-41).

More red flags followed. When Young tried to increase the company's residential volume by selling to VB Construction, the area's largest residential finisher, he heard from both Meltons: Greg called Young into his office and "said he wanted [Melton] to have 75 percent of VB's business," and Young "had phone calls" from Melton asking "where [Young] was pricing" VB. (Doc.509:35-41). Young also heard Greg telling Pedrick to deliver messages on "where we were pricing jobs" and "where we were going to go with price increases." (*Id.*). And Greg told Young directly that he had "talked to Bo [Strickland, of Evans] regarding where we were going to price jobs"; discussed pricing with Melton; and coordinated price-increase letters with competitor companies. (*Id.*).

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[5] Young had received antitrust-compliance training since he started with Blue Circle. (Doc.509:35). Pedrick had received the training since "the 1990s," as had Greg. (Doc.510:40-43; GX265). Pedrick was "sure" that Melton, too, had received the training, because "all the concrete guys have to attend these trainings." (*Id.* at 43 (affirming quoted question)). From 2010 to 2016, Young and Pedrick attended annual antitrust-compliance training at Argos—training that was mandatory for all concrete sales staff. (Doc.509:39-40).

3. Young reports his concerns

Young reported his concerns to Argos's management, including notifying the vice president, Pat Mooney, by email, text messages, and telephone calls that Greg was "giving" volume to Melton that Young had sold, and that Greg and Melton were "discussing prices." (Doc.509:38-41). Young also reported his concerns to Argos's HR department. (*Id.*). Argos's management "told Greg," who "cussed" Young out and said that "nothing" was going to come of his reports. (*Id.* at 41-42). As predicted, Argos did not do anything to address the conduct. (*Id.*). And, thereafter, Young's orders from VB Construction "were many times given to Elite," which "would ship the concrete rather than [Argos]." (*Id.*).

Given his concerns, Young tried to find a new job, but without success. (Doc.509:42-43). He also tried twice to transfer to another division of Argos, but he did not get an interview. (*Id.*).

Around 2011, Young was attending annual antitrust-compliance training when he got a text from Greg that Young "was going to look good in prison stripes." (Doc.509:138-39). Young took this to mean that he was going to be the "fall guy" for the conduct he believed to be illegal. (*Id.*). Young looked down the aisle and saw Greg there laughing. (*Id.*).

4. Young records the conspiracy

In late 2011, Young reported the conduct to the Atlanta Office of the Department of Justice's Antitrust Division. (Doc.509:43). As part of his cooperation with that office's investigation, he made "ballpark" 1,500 surreptitious recordings. (*Id.* at 48-51). He made so many because he was trying to "protect [himself]" in a "situation that scared the heck out of [him]." (*Id.* at 51-52).[6] Many of the recordings turned out to be irrelevant, including accidental recordings and recordings of conversations unrelated to business. (*Id.*). But 25 of them, which the government admitted into evidence (along with transcripts), captured "what [Young] was trained to believe [was] illegal activity." (*Id.* at 55-58).

a. The Mahany jobs

On March 7, 2012, Greg, Young, and Greg's boss—area manager Andy Stankwytch ("Stankwytch") (Doc.510:82)—were in the same room in Argos's office, (Doc.509:60-62; GX5/6). When Stankwytch stepped out to take a call, Greg told Young to quote a Mahany Construction job at "84

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[6] As "another level of protection to prove that he wasn't involved," Young also filed two *qui tam* lawsuits. (Doc.509:44-47).

and 88," (Doc.509:61-62)—meaning $84 per cubic yard for 3,000-pounds-per-square-inch concrete, and $88 per cubic yard for 4,000-pounds-per-square-inch concrete, (Doc.508:61-62). Greg then whispered: "And tell Pedrick also. And tell Pedrick to go tell David." (GX5/6). Young understood this to mean that he should tell Pedrick to tell Melton that Argos was "pricing Mahany at 84 and 88." (Doc.509:62-63). Greg wanted Melton to know how Argos would be pricing a customer so as not to "leave any money on the table." (*Id.* at 63). That was a common saying in the office for the idea that "you can make more money if everybody's pricing up"; specifically, "If somebody else was to bid 80 and get that job and you were at 84 and 88, they left four dollars on the table." (*Id.*).

Young had concerns about Greg's directive to share Argos's pricing with Elite because, given the antitrust-compliance training he had received, "there's no way you could . . . say it's legal to tell . . . a competitor -- about pricing." (Doc.509:63-64). Young understood Greg to have whispered the directive because "it's illegal, and others in the office can hear it." (*Id.*).

Later in the conversation, Greg reiterated, "I think we go 84 and 88," commenting that that price "ain't in the 70s" and "don't need to be in

the 70s." (Doc.509:64-67; GX7/8). Greg told Young to tell Pedrick to share Argos's price with Coastal as well. (*Id.*). As Young explained, Greg hoped to push the average sales price of concrete higher, out of "the 70s" and into "the 80s," where the "margins are higher." (Doc.509:67).

Separately, Young asked Greg, "what did Trey say this morning? Is he cool . . .?" (GX7/8). "Trey" was a reference to Elite co-owner Trey Cook; Young asked because Greg and Stankwytch had met with Melton and Cook at Cracker Barrell that morning to discuss "sticking to the price increase." (Doc.509:65-66). Greg responded that Cook was going to "stick to their letter" (GX9/10), i.e., stick to their "price increase letter," (Doc.509:68).

On May 25, 2012, Argos salesman Papy emailed Greg and Young about another Mahany job: "This job bid today. We [Argos] were at 89 for 4,000 PSI. Elite was at 80. Glad they're on board with the price increase." (Doc.509:69-72; GX181). Greg forwarded Papy's email to Young, saying: "Call David [Melton] and tell him how much he left sitting [o]n the table." (*Id.*). Young understood that he was to let Melton know that Argos's quote had been $9 higher than Elite's—a pretty big discrepancy—and that it

looked as if Papy was upset; Young also was to send a message to Melton to "get the price up." (*Id.*).

On May 30, 2012, Young invited Melton to lunch, explaining that he wanted to "talk to [Melton] in private." (Doc.509:72-73; GX17/18). They agreed to meet that day at Hooters. (*Id.*). Melton did not ask why Young wanted to talk in private. (*Id.*). At lunch, Melton told Young to tell Papy to "calm down." (Doc.509:73-74). Melton explained that he had to "have 5,000 yards a month to keep his job, and so every once in a while he was going to drop the price and then he would raise price on the other jobs." (*Id.*).

b. The Slade Sikes job

On July 24, 2012, Young called Greg and asked how he wanted to price a job for a large residential builder named Slade Sikes. (Doc.509:74-76; GX27/28). Greg responded, "I want to try to see if I can meet with David this morning." (GX27/28). Young understood this to mean that Greg did not want Young to price the job until Greg had talked to his brother about the pricing. (Doc.509:75-76). Young responded, "All right, . . . I'll just put 'em off until then." (GX27/28).

Later that day, after Greg had spoken to Melton, Greg reported that Elite would be bidding "$80 a yard" (plus $10 for fuel and environmental) to match Coastal's number. (Doc.509:76-79; GX30/31). Greg asked Young to "give [Sikes] a price maybe of 82 or 83 plus fuel," (GX30/31), which Young understood to mean that he should quote Sikes a price that was higher than Elite's, (Doc.509:79). In the same conversation, Young confirmed, "you said 82, . . . then?" (GX32/33). Greg responded, "Yeah. Something like that. . . . I told him . . . we'd stay above it." (*Id.*). Young understood the "him" was Melton. (Doc.509:79-80).

Young accordingly told Townsend, the Argos salesman who had been trying to get Sikes's business, to quote Sikes 82. (Doc.509:75, 80). Townsend "was ticked off" and "ended up leaving the company." (*Id.* at 80, 218-19, 226). Indeed, Townsend felt "handcuffed" by the situation. (*Id.* at 226). As he explained, it is "one thing" to not be able to sell because of a lack of material or manpower, "but if you can't . . . sell because you gotta share [with Melton and Elite], that's a different thing." (*Id.*).

Argos did ultimately quote higher than Elite for the Sikes job, and Argos did not win the job. (Doc.509:75, 81). Based on Young's conversations with Greg, there was "an agreement between Greg . . . and

. . . Melton for Argos to submit an intentionally higher priced quote," (*id.* at 82 (affirming quoted question)), the purpose of which was to allow Melton to "keep the job," (*id.* at 81). Young felt this was wrong and unfair to the customer. (*Id.* at 82).

c. The Fall 2012 price-increase letters

When Young worked at Argos's Savannah Division, Argos typically sent out price-increase letters once a year. (Doc.509:90). The prices listed were not the actual prices customers would pay; Argos determined those "final" prices "for each customer, each job." (Doc.510:67-68 (affirming quoted question)). But after sending out price-increase letters, Argos ultimately did increase its prices each year—though not always by the amount listed in the letters. (Doc.509:90).

Competitors have an incentive to coordinate on their price-increase letters because, if both competitors go up in the listed price, it is "100 percent" more likely that they will achieve an increase in final prices. (Doc.509:91-92). As Young put it: "[T]here's only so many concrete companies you can choose from if you're a finisher or a contractor. And if everybody is going up on price, you don't have much of a choice but to pay more money." (*Id.*).

In fall 2012, Young and Greg had a series of conversations with Pedrick about Argos's and Elite's anticipated price-increase letters. (Doc.509:97-99; GX53/54; GX56/57). These conversations reflected that Melton had called Pedrick wanting to know "[w]hat Argos was doing on the price increase letter" and that Pedrick was shuttling information between Melton at Elite, and Greg and Young at Argos, so that the firms could "raise their prices equally." (Doc.510:64-67).

On November 19, 2012, Argos announced an $8 price increase effective January 14, 2013 (Doc.508:177-78; Doc.509:99; GX138). On November 28, 2012, Elite announced a $7 price increase effective January 15, 2013. (Doc.508:179-80; GX139).

d. The SEPI Engineering job

On February 6, 2013, Young called Greg to say that SEPI Engineering wanted a price quote for a dog kennel it was building in Fort Worth. (Doc.509:82-83; GX84/85). Greg told Young to "[h]ang tight and [he'd] call [Young] right back." (*Id.*). After speaking to Melton, Greg reported that SEPI had told Melton he could have the project if he matched Argos's supposed $79 bid, although Argos had made no such bid. (Doc.509:84-86; GX87/88). Greg told Young to put in a bid of $87 to "prove

a point." (*Id.*). That bid would conform with the $8 price increase specified in the past fall's price-increase letter, and it would counter Coastal's perception that Argos's salesmen "were the whores of the market." (*Id.*). Greg described boasting to Melton that Argos's "average selling price [ ] in January . . . was 84.92," and crowing, "y'all motherfuckers top that." (*Id.*).

On February 28, 2013, Greg directed Young to submit a bid that was not "intended to be competitive," (Doc.509:89 (denying quoted question)); instead, the bid reflected "an agreement between Greg Melton and David Melton for Argos to submit an intentionally higher priced" bid for the job. (*id.* at 89-90; GX184/185).

e. The Fall 2013 price-increase letters

As the time for sending out price-increase letters approached, Pedrick again served as a conduit. (Doc.510:75-89). Pedrick passed prices or draft letters among Greg/Young at Argos, Melton at Elite, Strickland at Evans, and Coughlin at Coastal "so that everyone knew where everyone was going up on price." (Doc.509:101-104; Doc.509:221-22 ("[W]e would get everybody's – or the majority of the competition's price increase letters."); Doc.510:48-50). Pedrick's circulating of "letters and

pricing information" helped each company "ensure that everyone else was raising their prices." (Doc.510:49).

On September 26, 2013, Coastal issued its letter, announcing an $8 price increase effective January 1, 2014. (Doc.508:180-82; GX140). Five days later, Argos issued its letter, announcing an $8 increase effective January 15, 2014. (Doc.508:182-84; Doc.509:111-12; GX141).

On October 18, 2013, Pedrick assured Young that "everybody [he] talked with . . . is gonna put a letter out" with an increase of "[e]ight bucks." (Doc.509:101-03; GX102/103). On October 21, 2013, Pedrick confirmed that Elite's increase would be $8, and that the increase would be effective "January 1st." (Doc.509:108-09; GX105/106). Young asked Pedrick: "Will you be able to get me a copy of that, 'cause when . . . people ask me, you know what I'm saying?" (GX105/106). Pedrick said he would. (*Id.*). Young observed that, with Coastal's having already announced an $8 increase, if Elite did the same, "it's looking pretty good for the market." (Doc.509:109; GX105/106). By "good," Young meant "[g]ood for the ready-mix manufacturers." (*Id.*).

In an October 31, 2013, quote to VB Construction, signed by Strickland, Evans announced that, "On January 15, 2014 concrete prices

will increase $8.00 per cub. yd." (Doc.508:184-86; GX142). On November 18, 2013, Elite issued its price-letter, signed by Melton, announcing an $8 increase effective January 1, 2014. (Doc.508:186-88; GX143). That same day, Young and Pedrick spoke. (Doc.509:109). Young said he had heard that Mayson Concrete "put something out at . . . five bucks," which surprised him because he "thought Mayson said he was gonna go up eight." (Doc.509:109-10; GX122/123). Pedrick responded: "Well, that's what he said. . . . I guess uh, Mark [Turner] overruled him." (GX123). Pedrick continued: "I wouldn't be surprised if he didn't do something a little different because Mark's real particular about uh, federal trade stuff." (GX123). As Pedrick explained at trial, he meant that he would not be surprised to see Mark "go up a little bit different at a different date just . . . [s]o it didn't look like he was part of the conspiracy." (Doc.510:89).

Argos's price-increase letter, which was signed by Greg and Stankwytch, mentioned that "we continue to face numerous increased costs" but assured customers that "we remain committed to keeping your pricing competitive." (Doc.509:111-12; GX141). Although cement, aggregate, and sand prices "typically" did increase each year, those increases "wouldn't be to the tune of eight dollars." (Doc.509:112-13). Nor

was Greg committed to keeping prices competitive for Argos's customers—not when he was "discussing pricing with competitors." (*Id.* at 113).

f. The Statesboro jobs

As of 2012, Argos and Evans were the companies that poured most of the concrete in Statesboro, though Elite did some "smaller work" there. (Doc.510:59; *see also* Doc.509:31).

On May 2, 2012, Greg recounted that, in speaking to Strickland (of Evans) about pricing in Statesboro, Greg had said: "hey, look, either two things had to happen: their price needed to come up or mine's coming down." (Doc.509:117-19; GX15/16). According to Greg, Strickland responded: "Mine'll come up." (*Id.*). Young understood Greg to have told Strickland that, if Argos "didn't start getting more business [in Statesboro], . . . Greg was going to start dropping the price"; and Bo to have agreed to come up on price. (*Id.*).

On June 13, 2012, Pedrick told Young that he had had lunch with Strickland the day before, and that Strickland had said "there's a lot of work coming up, and we need to make sure that, you know, everybody gets their fair share of it." (Doc.509:119; GX22/23). Pedrick continued:

"[W]hat [Strickland] wants to do is, and I don't think Greg feels comfortable with it, and it's—it's not right, is he wants to sit down and say all right. This is what's coming up. You know, you take that, I'll take this. We take that. You know? One of those things. And you can't really do that." (GX23). As Pedrick explained at trial, Greg and Strickland "divv[ied] up jobs" in Statesboro through Pedrick: "I would let [Strickland] know what Argos was quoting on a job, and in return [Strickland] would do the same thing to me and I would refer that information to Greg." (Doc.510:54-57). The point was, "[j]ust like the tape says," to "mak[e] sure that one got this, one got that and everybody stayed busy and the price stayed up." (*Id.* at 56-57). Although Strickland would have liked to accomplish this by sitting down directly with Greg, Pedrick had a sense that Greg would not be comfortable with that because "it wouldn't be legal." (*Id.* at 56).

On September 4, 2012, Pedrick relayed to Young another conversation he had had with Strickland. (Doc.510:58-61; GX47/48). According to Pedrick, Strickland said that, "to prove that [Strickland] was trying to play fair . . . on that stuff that y'all got at the college--he quoted $90 on everything." (GX47/48). The college job was a rather-large

dining facility project at Georgia Southern University that Strickland and Greg had agreed Argos would win, (Doc.509:121; Doc.510:60-61); as Young explained at trial, Strickland had quoted high "to go with the agreement," (Doc.509:121). Later in the conversation, Pedrick relayed that Strickland "just wants to make sure that, you know, we understand that he's gon' keep the price up" so "we get some work, he gets some work, and everybody's happy." (GX47/48:1-2). When Young asked why Strickland didn't "go to Greg on that," Pedrick responded: "I think Greg would feel easier if--[Strickland] talks to me rather than him--'cause it's illegal for them to do it." (GX47/48:2; Doc.510:61-62). As Pedrick explained at trial, he understood, in 2012, that Greg thought such direct communications were illegal because Pedrick had talked to Greg about the conduct and because Pedrick "was being asked to relay this information." (Doc.510:62).

On January 29, 2013, Pedrick and Young spoke about a job in Statesboro that Argos and Evans were both bidding on. (Doc.509:123-24; Doc.510:67-69; GX79/80). Pedrick relayed that he had told Strickland that Argos would be quoting "92," and that Strickland had "smiled." (GX79/80). When Young asked, "Is [Strickland] still at 88?," Pedrick

responded: "Well, not now. He'll be at 92 now." (GX79/80). As Pedrick explained at trial, he took Strickland's smiling to mean that he would be raising his price to $92 "[b]ecause he could." (Doc.510:70).

The next day, Greg mentioned the total amount of concrete work done in Statesboro "last year" and said that, of the "big work," "[i]t's pretty even" between Argos and Evans. (Doc.509:115-16; GX82/83). Greg continued, "[w]e all know we gave them the Biology Building," but "the rest of the 3,000 yarders and all, we split it up." (GX82/83). As Young explained at trial, the "Biology Building" referred to an 8- or 10,000-yard concrete job at Georgia Southern University, which Argos had let Evans win by making sure "not to bid it aggressively." (Doc.509:114-16). "[W]e split it up" referred to Argos's and Evans's "divvying up" the remaining work between them. (*Id.* at 116-17 (affirming quoted question)). Argos and Evans did so by "get[t]ing the pricing to the other competitor to know who's going to bid what, who's going to bid high, who's going to bid low." (*Id.*). And Greg later compared the amount of work each company had done "[t]o make sure the agreement was working." (*Id.*). According to Young, Greg did the same thing—"comparing the amount of work that each company was getting"—with Elite. (*Id.*).

5. The government visits Argos's office

In late 2013, the government visited to Argos's Pooler office, (Doc.509:125-26), and "took computers and other information," (Doc.510:37-38). Young was not in the office that day. (Doc.509:126). When Young returned to work, Greg came into Young's office, closed the door, and asked if Young had heard what was going on. (*Id.*). When Young said he had, Greg said, "they could come lock us up at any time." (*Id.*). Young "felt scared," because he "didn't want to be away from [his] two- and three-year-old children." (*Id.*).

Also in 2013, government agents went to Pedrick's home. (Doc.510:34-37). Worried about losing his job and wanting to "protect Bo Strickland," who had long been a loyal cement customer, Pedrick lied and said he did not know of a conspiracy to fix prices in the Savannah market. (*Id.*). After that, "the initial investigation . . . kind of died out for a while," (Doc.510:37), so Pedrick kept "participating in [the] conspiracy," (*id.* (affirming quoted question)). As Pedrick put it, "we continued to do the same thing we had been doing." (*Id.*).

6. Varnedore witnesses the conspiracy

During the 2010-2016 period, VB Construction owner Terry Varnedore ("Varnedore") became "suspicious" because "price increase letters would basically come out at the same time and be the same amount." (Doc.508:175-76). Previously, prices in such letters had "fluctuate[d] from provider to provider, at least a few dollars"—the companies were "being competitive" and would have "different overhead costs"—and the increases "would be anywhere from two to four dollars a yard." (*Id.* at 176-78). But during the period in question, he would see a uniform, "big increase" of "[e]ight dollars per cubic yard." (*Id.*).[7]

One day, Varnedore called Melton to speak about pricing and "heard Greg in the background." (Doc.508:172). Argos's office "was just a few miles" away, so Varnedore "got in [his] truck" and drove over there. (*Id.*) Varnedore "parked a good ways from the office," and with "a set of binoculars," "observed [Greg and Melton] . . . sitting across the desk from each other" while he was on the phone with Melton "getting a price nailed

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[7] As of 2024, when Varnedore testified, concrete companies' price-increase letters were back to being "not close in price." (Doc.508:176).

down for how much [he] was going to pay for concrete for the next six months." (*Id.* at 172-74). Varnedore felt "betrayed"; he had considered the two "not only my business partners" but "my friends also." (*Id.* at 174).

In January 2014, after hearing that "the federal government had . . . raided Argos," Varnedore surreptitiously recorded a conversation with Melton. (Doc.508:192-96). Varnedore asked Melton what was "going on with . . . the feds," to which Melton replied, "to be honest, I don't think anybody in the concrete part [of Argos] has done anything." (Doc.508:196-97; GX128/129). But Melton added: "Um, their cement salesman [Pedrick] talks more than he should." (Doc.508:197).

7. The final tally

Young continued to witness anticompetitive conduct at Argos until July 2016, when he was fired for being a whistleblower. (Doc.509:13, 35). When Young joined Argos's Savannah Division in 2010, the average selling price for ready-mix concrete had been "probably in the 70s" per cubic yard. (*Id.* at 16-17). By 2016, that price had risen to "probably high 90s to . . . low hundreds." (*Id.*).

C. Standards of Review

1. This Court reviews the sufficiency of the evidence de novo. *United States v. Rutgerson*, 822 F.3d 1223, 1231 (11th Cir. 2016). In doing so, this Court views "all the evidence in the light most favorable to the government and draw[s] all reasonable inferences and credibility choices in favor of the jury's verdict." *Id.* at 1232 (cleaned up). The evidence "need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt," and "no distinction is to be made between the weight given to either direct or circumstantial evidence." *United States v. Grow*, 977 F.3d 1310, 1320 (11th Cir. 2020) (per curiam) (cleaned up). This Court is "required to affirm" the conviction "if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Rutgerson*, 822 F.3d at 1231 (cleaned up); *see also Grow*, 977 F.3d at 1320 ("A guilty verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt.") (cleaned up).

2. This Court reviews the denial of a motion for a new trial "only for abuse of discretion." *United States v. Grzybowicz*, 747 F.3d 1296, 1304

(11th Cir. 2014). This Court "must affirm unless [it] find[s] that the district court has made a clear error of judgment, or has applied the wrong legal standard." *Id.* at 1305. This "deferential" standard "respects that the district court has a better vantage point from which to make this judgment call." *United States v. Whatley*, 719 F.3d 1206, 1219 (11th Cir. 2013).

3. Ordinarily, this Court reviews the denial of a motion to dismiss an indictment for abuse of discretion, resolving issues of law de novo. *United States v. Cavallo*, 790 F.3d 1202, 1219 (11th Cir. 2015). But here, Melton acknowledges (at 57-58) that the argument he raises, "simply to preserve it," was "decided . . . adversely to him in *United States v. Graham*, 80 F.4th 1314 (11th Cir. 2023)."

SUMMARY OF THE ARGUMENT

1. The evidence, which included testimony from a whistleblower and a coconspirator and 25 audio recordings of the conspirators' operating the conspiracy in real time, readily sufficed to show an agreement among them to fix prices, rig bids, or allocate markets.

2. The district court acted within its discretion in denying Melton's motion for a new trial. Melton failed to show error in the

admission of evidence that the conspirators believed their conduct to be illegal based on their training, where the evidence was relevant (*inter alia*) to their motivations and credibility and to the context of the crime. Melton likewise failed to show prejudice, where the audio recordings themselves contain Pedrick's real-time statements of the same type, and where the district court gave multiple limiting instructions—one of which Melton approved—appropriately cabining the jury's consideration of the evidence.

3. As Melton concedes, his challenge to the district court's denial of his motion to dismiss the indictment is foreclosed by *United States v. Graham*, 80 F.4th 1314 (11th Cir. 2023).

ARGUMENT AND CITATION OF AUTHORITY

I. Sufficient evidence supports Melton's conviction

Melton challenges the sufficiency of the evidence, arguing (at 36-45) that the government did not prove an agreement to fix prices, rig bids, or allocate markets. He is incorrect.

A. Legal principles

Section 1 of the Sherman Act bars "[e]very . . . conspiracy, in restraint of [interstate or foreign] trade." 15 U.S.C. § 1. Given the background law against which the Sherman Act was enacted, courts have long "understood § 1 to outlaw only *unreasonable* restraints." *Ohio v. Am. Express Co.*, 585 U.S. 529, 540 (2018) (citation omitted) ("*Amex*").

Restraints "can be unreasonable in one of two ways." *Amex*, 585 U.S. at 540. Some restraints are unreasonable per se based on their inherently anticompetitive "nature and character." *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 64-65 (1911); *see, e.g.*, *NCAA v. Alston*, 594 U.S. 69, 89 (2021). "Typically only horizontal restraints—restraints imposed by agreement between competitors—qualify as unreasonable per se." *Amex*, 585 U.S. at 540–41 (internal quotation marks omitted). These include horizontal agreements to fix prices, *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 218 (1940); rig bids, *United States v. Dynalectric Co.*, 859 F.2d 1559, 1574 n.19 (11th Cir. 1988); or allocate

markets, *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46, 49–50 (1990).[8] Restraints that are not unreasonable per se are judged under the "rule of reason," a "fact-specific assessment" of "the restraint's actual effect on competition." *Amex*, 585 U.S. at 541 (quotation and brackets omitted).

In cases involving per se illegal restraints, "[t]he only inquiry . . . is whether there was an agreement" to engage in the restraint, because such restraints are categorically unreasonable. *Levine v. Central Fla. Med. Affiliates, Inc.*, 72 F.3d 1538, 1546 (11th Cir. 1996); *accord, e.g.*, *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 133 (1998) ("antitrust laws do not require proof that an agreement of that kind is, in fact, anticompetitive in the particular circumstances"); *Summit Health v. Pinhas*, 500 U.S. 322, 330-31 (1991) ("the essence of any violation of § 1 is the illegal agreement itself" and thus the "proper analysis" does not focus "upon actual consequences").

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[8] Just five years ago, Congress expressly confirmed courts' longstanding per se treatment of these restraints, agreeing that "[c]onspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States." 15 U.S.C. § 7a note (Findings; Purpose of 2020 Amendment).

Where, as here, a charged conspiracy has multiple objects (*see* Doc.1 ¶ 2, alleging conspiracy to fix prices, rig bids, and allocate markets), "a guilty verdict . . . will be upheld if the evidence is sufficient to support a conviction of any of the alleged objects." *United States v. Woodard*, 459 F.3d 1078, 1084 (11th Cir. 2006) (cleaned up); *see also Griffin v. United States*, 502 U.S. 46, 56-60 (1991); *United States v. Howard*, 742 F.3d 1334 n.3 (11th Cir. 2014) ("Prosecutors can . . . charge alternative elements in the conjunctive and prove one or more of them in the disjunctive, which is constitutionally permissible.").

B. Discussion

To prove the charged per se violation of Section 1 of the Sherman Act, the government had to show that: (1) there was an agreement among competitors to fix prices, rig bids, or allocate markets; (2) Melton knowingly joined the agreement; and (3) the agreement had the requisite nexus to interstate commerce. (Doc.499:6-7, 10 ("Court's Instructions to the Jury")); *see also United States v. Giordano*, 261 F.3d 1134, 1138, 1142-44 (11th Cir. 2001). Melton challenges the sufficiency of the

evidence only as to the first of these elements,[9] arguing that the government failed to prove a per-se-unlawful agreement because (in his atomized view of the evidence) (1) the conduct involving specific jobs—other than the Statesboro jobs—ostensibly was unilateral conduct rather than concerted action (Br. 36-42); and (2) "the price increase letters," although the result of concerted action, ostensibly were not price fixing. To the contrary, the evidence readily showed an agreement to achieve each of the charged objects: price fixing, bid rigging, and market allocation.

1. Price fixing

Any "combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity . . . is illegal per se." *Socony-Vacuum*, 310 U.S. at 223; *id.* at 221 ("[a]ny combination which tampers with price structures is engaged

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[9] Having failed to challenge the sufficiency of the evidence as to the second and third elements, Melton has abandoned any such challenge. *United States v. Day*, 405 F.3d 1293, 1294 n.1 (11th Cir. 2005) ("contentions not timely raised in the initial brief are deemed waived or abandoned").

in an unlawful activity"); *Giordano*, 261 F.3d at 1142. The test for price-fixing "is not what the actual effect is on prices, but whether such agreements interfere with the freedom of traders and thereby restrain their ability to sell in accordance with their own judgment." *Plymouth Dealers' Ass'n of No. Cal. v. United States*, 279 F.2d 128, 132 (9th Cir. 1960) (cleaned up).

The government's evidence showed exactly that. Young and Pedrick, corroborated by contemporaneous audio recordings and documents, testified that, for at least two years, Melton and his counterparts at rival concrete companies coordinated their issuance of price-increase letters. (Doc.509:90-91, 159-61; Doc.510:34, 48-51, 62-67). Specifically, in fall 2012, Pedrick shuttled pricing information between Melton at Elite, and Greg and Young at Argos, in advance of the companies' issuance of their price-increase letters. (*E.g.,* Doc.509:97-99; Doc.510:64-67). Soon thereafter, Elite and Argos issued letters with near-identical price increases for 2013. (GX138, 139).

In fall 2013, Pedrick performed the same function, this time shuttling price letters and information among four rival companies—Elite, Argos, Evans, and Coastal. (Doc.509:101-13; Doc.510:75-76). The

companies then promptly issued letters with identical price increases for 2014. (GX140, 141, 142, 143). Both Pedrick and Young testified, and the audio recordings corroborated, that the purpose of this conduct was to "coordinat[e] price increases with competitors" (Doc.509:96 (affirming quoted question))—i.e., to ensure that "prices went up at the same time and [by] the same amount," (Doc.510:154). From this evidence, a rational jury readily could infer an agreement, not just to exchange information, but to fix the prices to be listed in the conspirators' price-increase letters. *See, e.g.*, *United States v. Cargo Service Stations*, 657 F.2d 676, 681 (5th Cir. 1981) (holding that jury "could infer price fixing" from evidence, *inter alia*, of exchange of price information among competitors shortly before corresponding price increases were implemented).

Moreover, the agreement "tamper[ed] with price structures," *Socony-Vacuum*, 310 U.S. at 221. As Young testified, the coordinated issuance of price-increase letters made it "100 percent" more likely that the concrete companies would achieve an increase in final prices: "[T]here's only so many concrete companies you can choose from if you're a finisher or a contractor. And if everybody is going up on price, you don't have much of a choice but to pay more money." (Doc.509:92). Indeed,

Argos did succeed in increasing its prices each year after the issuance of the price-increase letters, even if not by the listed amount. (Doc.509:90). The agreement then, was price fixing. *See also Socony-Vacuum*, 310 U.S. at 222, 226 n.59 (prohibition on price fixing applies with full force to concerted action by competitors on any "formula underlying price policies").

Melton's argument to the contrary—that the agreement was not price fixing because it only fixed a "negotiation point" (at 30), rather than an "absolute" price (at 35)—is foreclosed by *Socony-Vacuum*. As the Supreme Court explained in *Palmer*, *Socony–Vacuum* "held that an agreement among competitors to engage in a program of buying surplus gasoline on the spot market in order to prevent prices from falling sharply was unlawful, *even though there was no direct agreement on the actual prices to be maintained*." 498 U.S. at 48 (emphasis added). *See also Plymouth Dealers*, 279 F.2d at 130, 132, 134 (holding that auto dealers' circulation of uniform list price was price fixing; "the fact that the dealers used the fixed uniform list price in most instances only as a starting point, is of no consequence," because the agreement "prevent[ed] the

determination of [market] prices by free competition alone.") (quoting *Socony-Vacuum*, 310 U.S. at 223).

2. Bid rigging

Bid rigging "is simply another form of horizontal price fixing": Competing bidders agree upon the price to be paid in an auction. *United States v. Aiyer*, 33 F.4th 97, 115 (2d Cir. 2022) (quotation omitted); *see also United States v. Fenzl*, 670 F.3d 778, 780 (7th Cir. 2012) ("bid rigging" is "a form of price fixing in which bidders agree to eliminate competition among them, as by taking turns being the low bidder"); *United States v. Flom*, 558 F.2d 1179, 1183 (5th Cir. 1977) ("An agreement that one company would not submit a bid lower than another is price fixing of the simplest kind and is a *per se* violation.").[10]

Witness testimony, contemporaneous recordings, and emails established that Melton and his brother, Greg, coordinated their bidding on certain projects so as not to "leave any money on the table."

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[10] Fifth Circuit decisions rendered prior to the close of business on September 30, 1981, are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

(Doc.509:63, 66). Specifically, as part of the overarching conspiracy, they agreed to submit collusive, non-competitive bids to three customers: Mahany, Slade Sikes, and SEPI Engineering.[11]

Mahany. Young testified—and audio recordings corroborated—that, on the very day that Greg and Stankwytch (or Argos) had met with Melton and Cook (of Elite) to discuss "sticking to the price increase," Greg told Young (initially whispering) to have Pedrick communicate Argos's planned bid prices on a Mahany job to both Melton and Coastal—while at the same time expressing his desire to push the average sales price of concrete higher, out of "the 70s" and into "the 80s," where the "margins are higher." (Doc.509:61-69; GX5/6, GX7/8, GX9/10). As Young recounted, when Melton later bid at $80—$9 lower than Argos's bid on another Mahany job—Argos salesman Papy was upset, stating—"Glad [Elite's] on

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[11] Melton is incorrect to suggest that the conduct relating to each job represented a separate violation. *See, e.g.*, Br. at 38 ("actions identified as antitrust *violations*"), 39 ("A number of the antitrust *violations* alleged"), 42 ("many of the alleged *violations*") (emphases added). Melton was charged with, and convicted of, a single, overarching conspiracy, one of whose objects was to rig bids. (Doc.499:6, 10-11). The defendants' rigging of bids for specific jobs is evidence of their agreement to achieve that object of the single conspiracy they were convicted of.

board with the price increase," (Doc.509:69-71; GX 181); Greg directed Young to tell Melton to "get the price up" (*id.* at 70-72); and Young privately met with Melton, who explained that, if on occasion he had to drop the price, he would raise the price "on the other jobs," (*id.* at 72-74; GX17/18).

Slade Sikes. Young testified—and audio recordings corroborated—that, before Greg would tell Young how to price the job, Greg reached out to Melton; after talking with Melton and learning that Melton would be pricing at $80, Greg directed Young to submit a bid of $82; and Greg himself explained this directive by telling Young that he had "told [Melton] . . . we'd stay above [Melton's quote]." (Doc.509:74-80; GX27/28; GX30/31; GX32/33). Young testified that, based on these events, he understood Greg and Melton to have had an "agreement" for Argos to submit "an intentionally higher priced quote for this job" to allow Melton to "keep the job." (Doc.509:80-82). This testimony was further corroborated by Townsend, the Argos salesman who had been trying to win the job, who testified that he ended up leaving the company over the incident, because he felt "handcuffed" by having to "share" jobs with Melton. (Doc.509:226).

SEPI. Young testified—and audio recordings corroborated—that, when Young told Greg that SEPI wanted a quote, Greg first told Young to "hang tight"; then called back to say that he had spoken to Melton and wanted Young to quote the job at a price that would conform with the $8 price increase specified in the recent price-increase letter; and that Greg later directed Young to submit a bid that, according to Young, was not "intended to be competitive" and instead reflected "an agreement between Greg Melton and David Melton for Argos to submit an intentionally higher priced [bid]." (Doc.509:82-90; GX84/85; GX 87/88; GX184).

From this evidence, a rational jury readily could have concluded that Greg and Melton agreed to rig their bids for the three jobs as part of their overarching conspiracy. Indeed, for the Slade Sikes and SEPI jobs, the evidence included direct evidence of agreement: Young's testimony that Greg and Melton had reached an "agreement" for Argos to submit intentionally losing bids; and for the Slade Sikes job, Greg's own recorded statement that he had told Melton that Argos would "stay above" Elite's price. *Cf. Cargo Service Stations*, 657 F.2d at 681 (affirming price-fixing conviction based, in part, on government's "direct evidence").

And for the Mahany jobs, that Greg conveyed his bid prices on the first job to both Melton and Coastal, that he did so the very day that he had met with Melton to discuss their companies' sticking to the price increase, and that both Greg and Papy later reacted to Melton's bid on the second job with surprise that Melton did not appear to be "on board with the price increase," are strong circumstantial evidence that Greg and Melton had, in fact, agreed that they would bid consistently with the overall, coordinated push to move average selling prices into the $80s. (Doc.509:62-74; GX5/6; GX7/8; GX9/10; GX181). This is particularly true when that evidence is considered alongside the other two bid-rigging episodes and the larger pattern of coordination between the concrete companies. *See United States v. Anderson*, 326 F.3d 1319, 1323, 1328-29 (11th Cir. 2003) (holding evidence sufficed to prove single bid-rigging conspiracy comprising three rigged contracts, where conspirators shared a "common goal," "those involved in the scheme by which the bids were rigged worked in a consistent manner on all three contracts," and "there was substantial overlap" of participants); *see also Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962) (observing that

a conspiracy is "not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole.").

Melton's claim (at 39-40) that these episodes reflected unilateral conduct because he ostensibly never "asked" Greg to submit non-competitive bids, and because Greg ostensibly was acting out of "concepts of fraternal duty," (1) lacks record support; (2) incorrectly assumes that a conspiracy requires formal, rather than tacit, agreement, *see Am. Tobacco Co. v. United States*, 328 U.S. 781, 809 (1946);[12] and (3) ignores the direct evidence that the brothers had an "agreement" that Greg would submit losing bids on the Slade Sikes and SEPI jobs, as well as the circumstantial evidence of Greg's repeatedly being unwilling to give a

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[12] Melton is correct (at 43) that Section 1 does not comprise "tacit collusion." Tacit collusion, or "conscious parallelism," is a particular type of interdependent action that can occur in an oligopolistic market. *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993). But Melton is wrong to suggest that conspiracy may not be shown by tacit agreement. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 553 (2007) ("agreement, tacit or express"); *United States v. Ryan*, 478 F.2d 1008, 1015 (5th Cir. 1973) (rejecting argument that "a tacit agreement cannot be an element of conspiracy"; "Oral statements of agreement are . . . unnecessary. It is enough if a conspiracy to commit a crime can be inferred from the circumstances present in a given case.").

price until he had spoken to Melton and of Melton's private-lunch commitment to compensate for his unacceptably low bid on the second Mahany job—"tell Hugh Papy to calm down"—by keeping his prices up on future jobs. The claim, then, does not come close to showing that there is no reasonable construction of the evidence that would allow a rational jury to find guilt beyond a reasonable doubt. *See Grow*, 977 F.3d at 1320.

3. Market allocation

Market allocation is an agreement among competitors to divide (*inter alia*) territories, customers, or contracts. *See Palmer,* 498 U.S. at 49-50 (territories); *United States v. Cadillac Overall Supply Co.*, 568 F.2d 1078, 1088 (5th Cir. 1978) (customers); *Flom*, 558 F.2d at 1183 (contracts).

Conspirator testimony, corroborated by contemporaneous recordings, established that Melton and his coconspirators agreed to allocate jobs and customers. For one, Young testified that Greg said he wanted Melton to get 75 percent of VB Construction's work, and that, thereafter, *Melton* shipped the concrete for many of the VB Construction jobs that Young had won. (Doc.509:40-41). This evidence, together with the evidence of Melton's calling to ask "where [Young] was pricing" VB

Construction jobs, (Doc.509:37), supports a reasonable inference that Melton and Greg had a tacit agreement to allocate those jobs. *See United States v. US Infrastructure, Inc.*, 576 F.3d 1195, 1205 (11th Cir. 2009) ("a common purpose or plan may be inferred from a development and collocation of circumstances") (internal quotation omitted).

In addition, the government presented powerful evidence of the conspirators' concerted action to keep their work "pretty even," both in Statesboro (Doc.509:115-17; GX82/83)—an area in which Elite, too, sold concrete, (Doc.509:31)—and elsewhere. (*See* Doc.509:115-16 (after explaining that Greg tracked the allocation of work between Argos and Evans to "make sure the agreement was working," Young testified that Greg did the same thing with Elite)). Indeed, Melton himself (at 6) describes Young and Pedrick's testimony as establishing "a divvying of Statesboro jobs between Argos Concrete and Evans." Melton makes no argument that this divvying was not part of the overall conspiracy, instead confining himself to the bald assertion that "David Melton was not involved in the Statesboro portion of the case." (Br. 6). Having made only a "perfunctory," "passing reference[]" to this claim in his brief's "'statement of the case,'" and having failed to provide "supporting

arguments and authority," Melton has abandoned any such claim. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-82 (11th Cir. 2014). For this reason alone, his sufficiency challenge must fail; specifically, his conviction must be upheld "if the evidence is sufficient to support a conviction of any of the alleged objects" of the conspiracy, *Woodard*, 459 F.3d at 1084, and here there is no cognizable challenge to the sufficiency of the Statesboro evidence to support Melton's conviction of conspiring to allocate markets.

In any event, any attack on the sufficiency of the Statesboro evidence would fail. The government presented direct evidence from Pedrick that the 2012-13 divvying up of Statesboro jobs was "all part of that overarching conspiracy that [Pedrick] pled guilty to"; the conversations Pedrick was having with Melton "about price increase letters" in the same period ("summer-fall into winter of 2012") also were "part of this same overarching course of conduct"; and the purpose of the overarching scheme was "[t]o keep the price up." (Doc.510:58, 62-63, 70-71) (affirming quoted questions)). The government also adduced strong evidence that Melton knew and participated in the conspiracy's "essential objective," *United States v. McNair*, 605 F.3d 1152, 1196 (11th Cir. 2010)

(internal quotation omitted), of "making sure that one got this, one got that[,] and everybody stayed busy and the price stayed up," (Doc.510:56-57)—including (*inter alia*) his calling for Young's VB Construction prices and his frequently filling VB Construction orders that Young had won. Thus, even if Melton "did not know all [the conspiracy's] details" or participate in every part of it, *McNair*, 605 F.3d at 1195-96, he was "responsible for the acts of his coconspirators in pursuit of their common plot," *Smith v. United States*, 568 U.S. 106, 111 (2013) (internal quotation omitted); *see also United States v. Rodriguez*, 553 F.3d 380, 391 (5th Cir. 2008) ("Conspiracy law contemplates the existence of subgroups. Provided that there is an overall agreement with consistent ultimate purposes, subagreements are in no way inconsistent with a conspirator's liability."). A reasonable jury, then, could have found him guilty of market allocation based, in part, on the divvying up of the Statesboro jobs.

II. The district court acted within its discretion in denying the motion for a new trial

Melton claims (at 45-57) that the district court abused its discretion in denying his motion for a new trial given Young's and Pedrick's

allegedly irrelevant testimony that, during the conspiracy, the conspirators believed their conduct to be illegal. Melton arguably has abandoned this claim by failing even to articulate an error in the district court's reasoning. Anyway, the district court acted well within its discretion.

A. Background

Consistent with its *James*-hearing representations (*see, e.g.*, Doc.387-1: 6, Entry #12 (Sept. 23, 2023)), the government stated in its trial memorandum that it planned to elicit "witness testimony regarding Argos's antitrust compliance training," which in part "covered criminal antitrust violations." (Doc.479:26). Melton did not seek to exclude the evidence pretrial.

Melton's trial strategy centered on discrediting the government's witnesses as biased and untruthful. From opening statement onward, Melton suggested that Young had recorded his coconspirators to "convince the people around him that there was a conspiracy going on" and "make a lot of money in [his] two whistleblower suits." (Doc.508:144-45; *id.* at 153) (cross-examinations: Doc.508: 216-18, 222; Doc.509:173-79, 187, 237-38) (closing argument: Doc.511:94, 96-97, 106, 108, 114).

Similarly, Melton described as "optimistic" a description of Pedrick as "someone who could conceal things." (Doc.508:149).

The government's case centered on the audio recordings, in several of which Pedrick opined—in real time—about his and his coconspirators' understanding of antitrust law:

- On June 13, 2012, Pedrick told Young that Evans owner Strickland wanted to allocate the upcoming Statesboro jobs by sitting down directly with Greg, but that "I don't think Greg feels comfortable with it, and it's—**it's not right** . . . **you can't really do that**." (Doc.510:56; GX22/23);

- On September 4, 2012, when asked by Young why Strickland had not conveyed to Greg directly his intention to keep the Statesboro prices up, Pedrick answered: "I think Greg would feel easier if--[Strickland] talks to me rather than him--'cause **it's illegal for them to do it**." (Doc.510:61-62; GX47/48:2);

- On November 18, 2013, Young said he had heard that Mayson co-owner Mark Turner's price-increase letter was for $5. Pedrick responded: "I wouldn't be surprised if he didn't do something a little different because **Mark's real particular about uh, federal trade stuff**." (Doc.510:89; GX122/123).

(Emphases added). These and the rest of the recordings were admitted without objection, save only the hearsay and multiple-conspiracy objections that had been overruled at the *James* hearing. (Doc.509:58).

Also without objection, the government introduced evidence that Young, Pedrick, and Greg had received antitrust-compliance training

since the 1990s (Doc.509:35; Doc.510:40-43; GX265); that the purpose of the trainings was "So we did not violate antitrust laws" (Doc.509:41); that Pedrick was "sure" that Melton, too, had received such training (Doc.510:43-44); and that, from 2010 to 2016, Young and Greg attended annual antitrust-compliance training at Argos (Doc.509:39-40).[13]

Similarly, Young testified, without objection, about (1) Greg's texting him during the 2011 antitrust-compliance training that Young "was going to look good in prison stripes," and Young's having taken that to mean that he was going to be the "fall guy" for "the illegal activity, or my perception of the illegal activity, the things that we were trained we couldn't do" (Doc.509:138-39); (2) Pedrick's sending Young a joking email or text "asking if Greg was going to teach the antitrust class" (Doc.509:138-39); and (3) Young's feeling "scared"—"because of the training. Because I didn't want to be away from my two- and three-year-

[13] Defense counsel, too, asked Pedrick about the "numerous of these trainings that you've talked about." (Doc.510:111).

old children"—after Greg's post-raid comment that "they could come lock us up at any time." (*Id.* at 139-40).[14]

Young and Pedrick also testified, again without objection, that, during the conspiracy, they (or they and their coconspirators) believed their conduct to be "illegal" or a violation of antitrust law:

- In response to authentication questioning about the audio recordings, which were contained on a flash drive, Young said that the flash drive contained: "Recordings of, what I was trained to believe, illegal activity." (Doc.509:56);[15]

- Asked about Greg's whispering in the March 7, 2012 recording (GX5/6)—"tell Pedrick to go tell David" what Argos's Mahany bid prices would be—Young said that he understood Greg to have whispered because "it's illegal, and others in the office can hear it." (Doc.509:64);[16]

- Asked about Greg's description in the March 7, 2012 recording (GX9/10) of a discussion he had had with Elite's co-owner Trey Cook about Trey's plans to "stick to their letter," Young said

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[14] Defense counsel asked Young whether he found it "upsetting" when SEPI misrepresented something. Young responded: "That's typical. What I found upsetting was, from the training I had been through, I didn't feel we should be discussing prices with a competitor . . . ." Defense counsel did not move to strike. (Doc.509:162).

[15] Melton mistakenly asserts (at 57) that Young "characterized all the recordings as capturing *'illegal activity'* based on his antitrust training."

[16] Melton incorrectly suggests (at 47) that, in response to this testimony, "The Court overruled the objection and noted its prior instruction." There was no objection to this testimony.

the discussion concerned him because: "Based on the training that we all received, there was no way you could go through that training and say that this is legal." (Doc.509:67-69);

- Asked about his comment in the June 13, 2012 recording (GX22/23) that he did not think Greg would be comfortable sitting down directly with Strickland, Pedrick said he thought that "[b]ecause it wouldn't be legal." (Doc.510:54-56);

- Regarding his "Because it's illegal for them to do it" comment in the September 4, 2012 recording (GX47/48), Pedrick said: (1) he got that impression because he "was being asked to relay this information"; and (2) he would not have made that comment had he not previously talked to Greg about the conduct. (Doc.510:58-59).[17]

- Asked to explain a joke that "[Greg] and [he] should teach the antitrust course," Pedrick said, "because of what we had been doing over the years, that they should pick us to teach the course"—"because we had violated" the law (Doc.510:43-44).

The only testimony to which the defendants objected was as follows. In each instance, the court either issued a limiting instruction or sustained the objection.

1. Young testified that his concerns first were triggered by Pedrick's story about having a three-way call with Melton and Greg to

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[17] Melton incorrectly suggests (at 51) that "the government stated, 'Because it's illegal for them to do it.'" In fact, the government's question *quoted* the comment *Pedrick* made in the recording.

write each other's price-increase letters. (Doc.509:22, 35). Asked why that was concerning, Young said, "Because we had been through training since I started with the company --" (*Id.* at 36). Counsel objected "as to any standard other than what the Court will charge concerning the law." The court "sustained" the objection:

> but with direction to the jury that only consider this testimony in response to this question as a response to this witness's impression and why something may have been concerning to this witness, not in any way as instructions on the law. I will instruct you on the law at the end of the trial. This is just a response to why something may have been concerning to this witness.
>
> So you may answer the question, but for that limited purpose, Members of the Jury.

(*Id.* at 36).

2. Young testified that he was concerned by Greg's instructing him (GX5/6) to tell Pedrick to share with Melton Argos's price for the Mahany job. (Doc.509:60-64). Asked why, Young said: "All the training that we had been to –." (*Id.* at 64). Counsel objected: "Relevance. I think we're getting into a matter that would be the Court's charge." The court overruled the objection but said:

> I've instructed the jury that when he talks about his training, it's just as to his impression and his concerns and his motivations, not as to the law. The Court will instruct them on the law. Thank you.

(*Id.* at 64).

3. Young testified that he was concerned by Greg's statement (GX32/33) that, for the Slade Sikes job, Greg wanted to submit an intentionally higher quote than Elite's to allow his brother to keep the job. (Doc.509:79, 81). Asked why, Young said: "Well, it affected my bonus as well, but I knew that it was -- I know no one here has been through the training that we've been through for antitrust or compliance, but –." (*Id.* at 81-82). Here, the government interjected, "Did you know that it was wrong –," followed by the court:

> Hold on one second. I'm going to direct the witness -- sir, I know you want to talk about the training, but it's up to the Court to tell the jury what the law is. Don't – I want you to stay away from saying what's legal, what's illegal. You can talk about your training, but you can't tell us what's legal or illegal. It's up to the Court to tell the jury what the law is.

(*Id.* at 81-82). The court then asked, "Is that a sufficient direction, Counsel? I saw where you all were going." Defense counsel replied, "Yes." (*Id.* at 82).

4. Young testified that he had concerns about his competitor companies' coordinating with each other on price-increase letters. (Doc.509:92). The court sustained an objection to the next question, "Do

you know if Greg Melton knew it was illegal to agree with competitors on price increases?," stating: "Calls for a legal conclusion." (*Id.* at 92-93).

5. Pedrick testified that, in 2013, he lied to federal agents. (Doc.510:36-37). The government asked whether he knew, "all the way back then that on some level fixing prices, doing this kind of conduct with competitors was wrong or illegal?" (*Id.* at 39). Counsel objected, "That would go into a matter that would be for the Court to instruct," and the court responded:

> I'm going to instruct the jury that the answer to this question is simply what the defendant's knowledge is, not what the law is. It's up to the Court to instruct you on the law, and don't take anything from any of the witnesses' testimony as instructions on the law. Okay. So sustained with that cautionary instruction. Go ahead.

(*Id.* at 39-40).

6. Pedrick testified about passing price-increase letters and price information among Greg, Melton, and Strickland. (Doc.510:49-51). Asked whether he had a sense why the three were having him do this rather than talking to each other directly, Pedrick said, "Yes, I did. I mean it -- for them to speak directly to each other is a violation of antitrust." (Doc.510:51-52). Counsel objected, and the court instructed the jury:

> [W]hatever he says about his belief on the law is not an instruction to you on the law and is not to be considered by you at all as to what the evidence is. It's just his own understanding of the circumstances surrounding the conversations that they're discussing. I will instruct you on the law.

(Doc.510:51-52).

In preliminary instructions, the court had repeatedly informed the jury that it must look to the court alone for instructions on the law. (Doc.508:111; 117 ("The law often uses words or phrases in special ways, so it's important that any definitions you hear come only from me and not from any other source."); 119-20). The court also had instructed the jury on limited relevance: "Some evidence is admitted for only a limited purpose. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other." (*Id.* at 113). In its final instructions, the court reiterated that the jury "must follow the law as I explain it," and emphasized that the jury "must not single out or disregard any of the Court's instructions on the law." (Doc.511:124).

After the verdict, Greg and Melton moved for a new trial, arguing the "interests of justice" on the ground that Young and Pedrick allegedly had "testified repeatedly, and over objection, that the defendants

engaged in 'illegal' activity based on Argos' internal compliance training." (Doc.505:1). The court denied the motion, holding that the Meltons had failed to show trial error, much less substantial, prejudicial error warranting the extraordinary remedy of a new trial. (Doc.556:3). The court reasoned as follows.

First, the testimony was "relevant to factual issues in the case." (Doc.556:4).[18] "For instance," Young's testimony tended to explain that, "[g]iven his training," he was worried he could be prosecuted and, for that reason, recorded his interactions with the conspirators and reported the conduct to law enforcement. (*Id.*) Such an explanation was "particularly relevant," the court observed, given defense counsel's contentions that Young "selectively recorded conversations and fabricated the conspiracy allegations to obtain a financial windfall through a civil lawsuit." (*Id.*) Similarly, Pedrick's testimony about the antitrust training both he and his co-defendants had received tended to explain why they used him—a cement salesman who had legitimate

[18] At trial, the Meltons' only objection was "Relevance." (Doc.509:64). Their new-trial motion advanced no other argument for inadmissibility.

reasons for regularly visiting concrete producers—as a conduit for their illicit communications. "For these and other reasons," the court concluded, the training testimony "helped the jury understand the full picture" of the conspiracy. (*Id.*).

Second, the court's cautionary instructions "cured any unfair prejudice the Meltons could have suffered." (Doc.556:4). The testimony could not have caused the jury to convict the Meltons for violations of Argos's corporate policies, the court reasoned, because, contrary to the Meltons' assertion, Young and Pedrick testified about "their training on and understanding of antitrust laws," not corporate policies. (*Id.*) Nor could the jury have taken the testimony as instructions on antitrust law given the court's repeated cautions that the jury was to consider the testimony only as evidence of the witnesses' and the defendants' "understanding"; and given the court's directives in both preliminary and final instructions that the jury decide the case based on the law as received from the court. The court concluded that, in light of its instructions, and the presumption that the jury followed them, the Meltons' suggestion that the testimony "somehow" tainted their trial "does not withstand minimal scrutiny." (*Id.*).

B. Legal principles

A district court may grant a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33(a). To warrant a new trial for evidentiary error, "a significant possibility must exist that, considering the other evidence presented by both the prosecution and the defense, the statement had a substantial impact upon the verdict of the jury." *United States v. Arbolaez*, 450 F.3d 1283, 1290 (11th Cir. 2006) (cleaned up). "[T]he burden is on the defendant to demonstrate that a new trial ought to be granted." 3 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Criminal § 581 (5th ed. 2025).

Evidence is relevant if it has "any tendency" to make "more or less probable" a "fact [that] is of consequence in determining the action." Fed. R. Evid. 401. To be "of consequence," a fact need not be an ultimate fact; it need only be a "step on one evidentiary route to the ultimate fact." *Old Chief v. United States*, 519 U.S. 172, 178-79 (1997). Relevant evidence is "generally admissible," *United States v. Gbenedio*, 95 F.4th 1319, 1330 (11th Cir. 2024) (citing Fed. R. Evid. 402), and "[t]he standard for what constitutes relevant evidence is a low one," *United States v. Macrina*, 109 F.4th 1341, 1349 (11th Cir. 2024).

C. Discussion

Although acknowledging (at 33) the applicable deferential standard of review, Melton makes no attempt to meet it. His brief (at 45-57)—a virtual carbon copy of his new-trial motion (Doc.505:2-14)—describes the district court's reasoning (at 51) but identifies no error in it, much less an error that would qualify as an abuse of discretion. *See Grzybowicz*, 747 F.3d at 1305 (a "clear error of judgment" or the application of "the wrong legal standard"). Thus, this Court "must" affirm. *Id.* (Alternatively, this Court properly could deem the claim abandoned. *See United States v. Esformes*, 60 F.4th 621, 635 (11th Cir. 2023) (claim abandoned when defendant offers "a skeletal argument" with only "bare citation[s]")).

In any event, the district court acted well within its discretion. As the court recognized, Young and Pedrick did not testify repeatedly that the Meltons "*engaged* in 'illegal' activity based on Argos' internal compliance training." (Doc.505:1 (emphasis added); compare Br. at 45). Instead, Young and Pedrick testified only that, at the time the conspirators engaged in the charged conduct, they *believed* it to be illegal. (Doc.556:4-5).

Having correctly characterized the testimony, the court correctly held that it satisfied Rule 401—in a variety of ways. As for Young's testimony that he believed the conduct to be illegal based on his antitrust training, that testimony tended to explain why he recorded the conduct, reported it to the police, and filed two *qui tam* actions about it. And his motives for doing so were "of consequence" to the jury's assessment of his credibility, particularly given defense counsel's repeated claims that he had ginned up the conspiracy for financial gain. *See, e.g.*, *United States v. Moya-Rodriguez*, 398 F. App'x 488, 491 (11th Cir. 2010) (customs official's testimony that she initially believed defendant's jeans hid drugs rather than money was properly admitted because it (1) "provided an explanation for the officer's actions when questioning and searching" the defendant; and (2) "provided context for the search and tended to disprove [defendant's] suggestion that the customs officers acted improperly").

As for Pedrick's testimony that he and the defendants had received antitrust training—and that, given that training, he understood *Greg* to believe that the conspiracy was illegal—that testimony tended to explain both (1) why the conspirators used Pedrick as a conduit for their

communications (*i.e.*, they believed their conduct to be illegal and so were trying to conceal it)[19] and (2) the significance of Pedrick's own tape-recorded statements that Greg would not be comfortable divvying up jobs with Strickland directly because it "it's not right . . . you can't really do that" (GX22/23), and it would be "illegal," (GX47/48). *See, e.g.*, *United States v. Wright*, 392 F.3d 1269, 1276-77 (11th Cir. 2004) (in prosecution for firearm possession, evidence of defendant's intoxicated driving and resisting arrest were properly admitted because they "contributed to the understanding of the situation as whole," allowing government to "put a cohesive sequence of the crime before the jury").[20]

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[19] The concealment evidence, in turn, was relevant to consciousness of guilt. *See United States v. Borders*, 693 F.2d 1318, 1324 (11th Cir. 1982) ("an accused's flight, escape from custody, resistance to arrest, *concealment*, assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself.") (emphasis added); *see also, e.g.*, *United States v. Hernandez*, 831 F. App'x 932, 935 (11th Cir. 2020) (disguising handwriting).

[20] Although the Court need not reach the question, we note that Pedrick's testimony also was relevant to whether the Meltons knowingly joined the conspiracy. *See Giordano*, 261 F.3d at 1140 (holding evidence sufficient that Defendant Weil knowingly joined price-fixing and market-allocation conspiracy, based in part on evidence that "Weil knew and understood that the meeting was illegal").

The cases Melton cited in his new-trial motion (Doc.505:12-14), and cites again here (at 54-56), do not help him. It may be that criminal liability generally, *see United States v. Stefan*, 784 F.2d 1093, 1098 (11th Cir. 1986), cannot be premised on violations of "internal corporate policies," "civil regula[tions]," or "rules of a private game." *See, e.g.*, *United States v. Christo*, 614 F.2d 486, 492 (5th Cir. 1980) (government "attempt[ed] to bootstrap a series of checking account overdrafts [and] a civil regulatory violation" into "felonies"); *United States v. Chandler*, 388 F.3d 796, 805 (11th Cir. 2004) (prohibiting criminal liability premised on rules of a private game); *Flextronics Int'l USA, Inc. v. Murata Mf'g Co., Ltd.*, 2020 WL 5106851 *14 (N.D. Cal. Aug. 31, 2020) (discussing company's internal antitrust "compliance policy" in civil context); *In re Urethane Antitrust Litig.*, 2016 WL 475339, at *2 (D.N.J. Feb. 8, 2016) ("whether Dow employees believed they violated Dow's [own] antitrust policies is irrelevant"). But, as the district court recognized, the testimony here described the conspirators' "training on and understanding of antitrust laws," not corporate polices. (Doc.556:4).

In short, the district court correctly concluded that Melton had failed to show error in the admission of the testimony. For that reason

alone, the court did not abuse its discretion in denying his new-trial motion. *Cf. United States v. Martinez*, 763 F.2d 1297, 1314-15 (11th Cir. 1985) (reversing grant of new trial, given lack of trial error: "The government's action here was not a discovery violation and does not justify the exercise of discretion in favor of a new trial.").

The district court likewise correctly assessed the lack of prejudice. As the court reasoned, it gave five contemporaneous limiting instructions—instructions the jury must be presumed to have followed, *United States v. Almanzar*, 634 F.3d 1214, 1222 (11th Cir. 2011)—that the jury was to consider the evidence only on "the witnesses[']and the Defendants' understanding," not on the law. (Doc.556:5; *see* Doc.509:36 ("this witness's impression and why something may have been concerning to this witness"); *id.* at 64 ("his impression and his concerns and his motivations"); *id.* at 81-82 ("You can talk about your training, but you can't tell us what's legal or illegal."); Doc.510:39-40 ("what the defendant's knowledge is"); *id.* at 51-52 ("his belief on the law . . . just his own understanding")). Defense counsel explicitly approved one of those instructions (Doc.509:82), and the Meltons made no claim that the instructions were insufficient to guard against any risk of unfair

prejudice. Nor, the instructions aside, was there any real chance of unfair prejudice when the audio recordings captured Pedrick's making similar statements amid the conspiracy. The district court thus correctly concluded that Melton failed to show prejudice. For this reason as well, the court did not abuse its discretion in denying the new-trial motion. *See United States v. Spoerke*, 568 F.3d 1236, 1251 (11th Cir. 2009) (upholding district court's denial of new-trial motion, in part because instructions appropriately cabined relevance of evidence in question).

III. Melton's grand-jury argument is foreclosed by *Graham*

Defendant argues (at 57-60) that the district court erred in failing to dismiss his indictment because the grand jury allegedly was "improperly comprised." He makes the argument, however, "simply to preserve it," acknowledging that "this Court has decided this issue adversely to him in *United States v. Graham*, 80 F.4th 1314 (11th Cir. 2023)." His concession disposes of the argument. *See United States v. Canario-Vilomar*, 128 F.4th 1374, 1381 (11th Cir. 2025) ("Under our prior-panel-precedent rule, 'a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en*

banc.'") (quoting *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008) ("acknowledg[ing] the strength of the prior panel precedent rule in this circuit").

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE AND SERVICE

This brief complies with the type-volume limitations of Rules 32(a)(7)(B) and 29(a)(5) of the Federal Rules of Appellate Procedure because it contains 12,918 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

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Today this brief was filed and served using the Court's CM/ECF system, which automatically sends notification to the parties and counsel of record.

Dated: May 23, 2025

/s/ *Shana Wallace*
Shana Wallace