IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SHRONDA COVINGTON,

Defendant-Appellant

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

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL AND STAY OF SENTENCE PENDING APPEAL

Pursuant to Federal Rule of Appellate Procedure 27(a)(3), the United States respectfully files this opposition to defendant-appellant Shronda Covington's Motion for Bail and Stay of Sentence Pending Appeal, filed on May 28, 2025.

STATEMENT OF THE CASE

A. Factual Background

W.W. was an inmate in the custody of the Bureau of Prisons (BOP) Federal Correctional Institution (FCI), Petersburg. Doc. 410 (PSR), at 5 (¶ 10).[1] Beginning in the early morning hours of January 9, 2021, and continuing until his death the next day, W.W. exhibited sudden and severe medical symptoms, including incontinence, incomprehension, incoherence, and the inability to stand or walk without falling. *Ibid.* Without medical attention to address his readily apparent crisis, W.W. fell into walls and other objects dozens of times, striking his head and other parts of his body. *Ibid.* After sustaining multiple skull fractures and extensive scalp hemorrhaging, W.W. died of blunt force trauma to the head. *Id.* at 6 (¶ 19). According to the medical examiner, had W.W. been hospitalized and examined at any point during his ordeal, he could have lived. *Ibid.*

[1] "Doc. __, at __" refers to the docket entry and page number of documents filed in the district court, No. 3:23-cr-00068-RCY-2 (E.D. Va.). "Mot. __" refers to the page number of Covington's Motion for Bail and Stay of Sentence Pending Appeal, C.A. Doc. 15. "__/__/__ Trial Tr. __" refers to the date and page number of the trial transcript.

Defendant Shronda Covington was a lieutenant and the highest-ranking official at the facility the night W.W.'s ordeal began. PSR 5 (¶ 11). At that time of night, when only one supervisor is on duty and no medical staff are on site, BOP policy requires correctional officers to notify the lieutenant if there is an inmate who requires medical assistance. *Id.* at 5-6 (¶ 13). Policy then requires that lieutenant to respond and call the facility's 24-hour on-call physician, send the inmate to the hospital, or both. *Ibid.* BOP policy and practice also require lieutenants to respond to housing units whenever the housing unit officer requests assistance. *Ibid.*

W.W.'s cellmate notified two officers working in his housing unit of W.W.'s symptoms, and these officers also observed W.W.'s symptoms for themselves. PSR 5 (¶ 12). One of those officers, Officer Shantae Moody-Moore, called Covington to report W.W.'s symptoms and ask for her help. *Id.* at 6 (¶ 14). Covington said that she would come to the housing unit, but she did not. *Id.* at 6 (¶¶ 14, 17). After W.W. fell and hit his head in his cell, Moody-Moore called Covington a second time. *Id.* at 6 (¶ 15). Moody-Moore told Covington that W.W. had hit his head, and she believed W.W. needed medical help. *Ibid.* Again,

Covington promised to come to the housing unit but did not. *Id.* at 6 (¶¶ 14, 17). When Covington failed to respond, the second officer who observed W.W., Officer Lakeshia Barnes, went to Covington's office and told Covington again about W.W.'s symptoms. *Id.* at 6 (¶ 16). For a third time, Covington promised to go see W.W. *Ibid.*

Despite Covington's repeated promises, and despite BOP policy requiring her to respond to the housing unit, Covington never went to the housing unit. PSR 6 (¶ 17). Despite BOP policy requiring Covington to address W.W.'s medical issue, Covington did not contact the on-call physician, call 911, telephone the officers back to check on them or on W.W., or ask another officer to check on W.W. or the officers. *Ibid.* Instead, Covington called Officer Moody-Moore and asked her to enter a false record saying that Covington had conducted rounds in W.W.'s housing unit, which she had not. *Ibid.* Officer Moody-Moore refused to do so. *Ibid.* After Covington's shift ended, she left the facility. *Ibid.*

W.W. suffered in his cell for approximately 12 more hours, exhibiting the same symptoms and frequently falling and crashing into concrete walls and other objects. PSR 6 (¶ 18). W.W. was then moved

to a suicide observation cell, where he continued to suffer the same symptoms. *Ibid.* W.W. fell head-first into a wall and to the floor the next morning and did not move again. *Ibid.* He was pronounced dead thereafter. *Ibid.*

Covington admitted during a voluntary interview with federal investigators that Officer Moody-Moore called her twice about W.W. but insisted that Moody-Moore said nothing about W.W.'s symptoms. PSR 7 (¶ 21). Covington claimed that, during the first call, Moody-Moore reported only that W.W. was walking around his cell and listening to music, and that, during the second call, Moody-Moore reported only that W.W. was doing push-ups. *Ibid.* Covington admitted that if she had been aware that W.W. was experiencing a medical issue, she would have had an obligation to respond to W.W.' s cell. *Ibid.* Covington also denied asking Moody-Moore to falsify rounds records and denied that any other officer had talked to her about W.W. *Ibid.*

B. Procedural Background

1. A grand jury charged Covington with violating (1) 18 U.S.C. 242 by willfully violating W.W.'s constitutional rights while acting under color of law by demonstrating deliberate indifference to his

serious medical needs, resulting in his bodily injury and death (Count 1) and (2) 18 U.S.C. 1001 by making materially false statements to federal agents (Count 6). Doc. 34, at 2-3, 6. Specifically, Count 6 charged Covington with falsely denying that a correctional officer told her about W.W.'s symptoms; falsely claiming that an officer reported that W.W. was walking around his cell, listening to music, and doing push-ups; and falsely denying that she had asked a correctional officer to fabricate rounds records. *Id.* at 6. The grand jury also charged two codefendants, Tonya Farley and Yolanda Blackwell, with violating Section 242 for their roles in W.W.'s death. *Id.* at 3-4. A fourth defendant, Michael Anderson, pleaded guilty to violating 18 U.S.C. 242 in connection with W.W.'s death and was sentenced to 36 months' imprisonment. Amended Judgment, *United States v. Anderson*, No. 3:23-cr-00080 (E.D. Va. Jan. 30, 2024).

2. Defendants Covington, Farley, and Blackwell proceeded to trial. Covington moved to sever her trial from her codefendants. Doc. 101. Covington argued that the defendants were improperly joined, and that, even if the defendants were properly joined, her case should be

severed because a joint trial would entail the admission of evidence that was irrelevant and unfairly prejudicial as to her. *Id.* at 6.

The district court denied Covington's severance motion. Docs. 134-135. The court reasoned that joinder was proper because "the three defendants have participated in the same series of (alleged) unlawful acts or transactions for [Federal] Rule [of Criminal Procedure] 8(b) purposes in the form of their alleged consecutive failures to provide adequate medical care to W.W. at FCI Petersburg over the course of January 9 and 10." Doc. 134, at 7. The court further held that the evidence Covington argued was irrelevant and prejudicial as to her—namely, evidence of W.W.'s time in the suicide observation cell, including video showing his falls, injuries, and death—was both "relevant and not substantially outweighed by any risk of unfair prejudice in Defendant Covington's . . . case." *Id.* at 10; *see also* Doc. 132, at 4-9 (denying motion on the grounds that the contested evidence was directly relevant to proving elements of the charged offenses and was not unfairly prejudicial).

Covington moved for a judgment of acquittal after the government's case-in-chief; after the close of evidence; and after trial.

12/16/24 Trial Tr. 1859; 12/19/24 *id.* at 2820-2821; Doc. 346. Covington also moved for a new trial. Doc. 351. Among other post-trial arguments, Covington asserted, as she does here, that the court erred in failing to provide her requested jury instructions about proximate cause, hindsight, and willfulness (Doc. 346, at 8, 11-12, 15-18); and that the government failed to meet its burden of establishing that her false statements were material (*id.* at 22-25).

The district court denied Covington's motions each time they were made. 12/16/24 Trial Tr. 1859-1860; 12/19/24 *id.* at 2821-2822; Docs. 396, 397, 414, 417. Regarding Covington's jury-instructions arguments, the court held that Covington failed to show that each instruction she requested "(1) was correct, (2) was not substantially covered by the charge that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense." Doc. 414, at 4, 9, 13 (quoting *United States v. Hager*, 721 F.3d 167, 184 (4th Cir. 2013)). Specifically, the court held that (1) the proximate-cause instruction was both unnecessary and contrary to "Fourth Circuit and Supreme Court precedent establishing but-for causation as the appropriate standard in

the context of a 'results from' penalty provision" (Doc. 414, at 13); (2) the hindsight instruction was unnecessary because the only case Covington cited in support was a nonbinding, out-of-circuit civil case, and because "the instruction already called for a finding of 'actual knowledge' and thus substantially covered the issue of concern" (*id.* at 4); and (3) the willfulness instruction was unnecessary because the court's instruction "comport[ed] with current Fourth Circuit and Supreme Court precedent" (*id.* at 9). As to Covington's materiality argument, the court held a jury reasonably could have inferred the materiality of Covington's false statements because, *inter alia*, "Covington's statements called into question the truthfulness of the actions reported by other witnesses and could therefore have redirected the investigation towards those individuals." *Id.* at 20.

3. On December 21, 2024, after an 11-day trial, the jury returned a verdict finding Covington guilty on both counts. Doc. 313, at 1, 6. With respect to Count 1, the jury found that Covington's offense resulted in bodily injury, but not in W.W.'s death. *Id.* at 1. The jury found Farley guilty of making false statements to a federal agent in

violation of 18 U.S.C. 1001 and acquitted her of the remaining counts; the jury also acquitted Blackwell of the count against her. *Id.* at 2-3.

C. Sentencing

The district court sentenced Covington to 12 months' incarceration and 12 months' home detention as a special condition of supervised release. Doc. 406, at 2. During sentencing, Covington asked for release pending appeal. Mot. 11. The court denied the request. *Ibid.*

DISCUSSION

This Court should deny Covington's Motion for Bail and Stay of Sentence Pending Appeal. "[O]nce a person has been convicted and sentenced to jail, there is absolutely no reason for the law to favor release pending appeal or even permit it in the absence of exceptional circumstances." *United States v. Miller*, 753 F.2d 19, 22-23 (3d Cir. 1985) (quoting H.R. Rep. No. 907, 91st Cong., 2d Sess. 186-187 (1970) (alteration in original)). Accordingly, a federal criminal defendant who appeals her sentence must be detained during the pendency of appeal unless she can demonstrate "by clear and convincing evidence" that (1) she is unlikely to flee or to endanger another person or the community, and (2) her appeal "is not for the purpose of delay and raises a

substantial question of law or fact likely to result in[] (i) reversal [or] (ii) an order for a new trial." 18 U.S.C. 3143(b)(1)(A) and (B).[2] A "substantial question" is one that is more than "fairly debatable," *United States v. Perholtz*, 836 F.2d 554, 555 (D.C. Cir. 1987) (construing Fourth Circuit standard); specifically, it is "a 'close' question or one that very well could be decided the other way," *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (per curiam) (citation omitted).

Covington's motion fails to identify any substantial question of law or fact, let alone demonstrate by clear and convincing evidence that any such question is likely to result in reversal or a new trial. The district court correctly instructed the jury using Fourth Circuit and Supreme Court precedent and properly denied Covington's motion to sever her trial, and the evidence was more than sufficient to sustain Covington's false-statements conviction.

[2] The government takes no position on whether Covington has satisfied 18 U.S.C. 3143(b)(1)(A) in this response.

A. Covington fails to identify any error in the jury instructions, let alone a substantial question of law or fact.

The district court's jury instructions correctly reflected Supreme Court and Fourth Circuit precedent, and Covington's reliance on nonbinding, out-of-circuit cases is unavailing. Covington therefore fails to demonstrate that there exists a substantial question of law or fact as to whether each of her proffered instructions "(1) was correct, (2) was not substantially covered by the charge that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense." *United States v. Hager*, 721 F.3d 167, 184 (4th Cir. 2013).

1. No proximate-cause instruction was required.

First, as to the "result[s] in bodily injury or death" element of the Section 242 charge, the district court properly instructed the jury that the government was required to prove beyond a reasonable doubt that, "*but for* the Defendant's deliberate indifference to [W.W.]'s serious medical needs, [W.W.] would not have suffered injury or died." Doc. 317, at 45 (emphasis added). This is not a close question given that the Supreme Court has held that identical "results from" language used in

a different criminal statute requires a showing of but-for causation. *Burrage v. United States*, 571 U.S. 204, 211, 216 (2014) (analyzing 21 U.S.C. 841(b)(1)(C), which provides for enhanced penalties "if death or serious bodily injury *results from*" the use of a controlled substance that has been unlawfully distributed by a defendant, and holding that by using the "results from" operator in this statute, Congress deliberately chose to "use language that imports but-for causality" (emphasis added)).

Covington relies on out-of-circuit cases to support her contrary position, but as the district court correctly held in rejecting that position, such an instruction would contravene "Fourth Circuit and Supreme Court precedent establishing but-for causation as the appropriate standard in the context of a 'results from' penalty provision." Doc. 414, at 13; *see United States v. Patterson*, 38 F.3d 139, 144-145 (4th Cir. 1994) (holding that, by its plain terms, a statute requiring proof that "death results" does not require any evidence of foreseeability of death or proximate cause); *United States v. Alvarado*, 816 F.3d 242, 249 (4th Cir. 2016) (explaining that, after *Burrage*, the requirement of but-for causation in "death results" cases remains "good

law"). Numerous other circuits have reached the same conclusion. *United States v. Thompson*, 945 F.3d 340, 346 (5th Cir. 2019); *see also United States v. Harden*, 893 F.3d 434, 447-449 (7th Cir. 2018); *United States v. Burkholder*, 816 F.3d 607, 613-618 (10th Cir. 2016); *United States v. Webb*, 655 F.3d 1238, 1250-1255 (11th Cir. 2011); *United States v. De La Cruz*, 514 F.3d 121, 137 (1st Cir. 2008); *United States v. Houston*, 406 F.3d 1121, 1124-1125 (9th Cir. 2005); *United States v. Robinson*, 167 F.3d 824, 832 (3d Cir. 1999).

Covington relies (Mot. 16-19) in large part on *United States v. Meany*, a Western District of Kentucky case that held that, "[i]n such cases" where "death is not an inherently foreseeable result of violating § 242," a proximate-cause instruction is appropriate in a death-resulting case. No. 3:22-CR-00085, 2024 WL 3907286, at *11 (W.D. Ky. Aug. 22, 2024). Of course, this Court is bound by circuit precedent like *Patterson* and *Alvarado*—not *Meany*. But even if this Court were to consider *Meany*'s applicability, any error by the district court in failing to give Covington's requested proximate-cause instruction would have been harmless because the jury *acquitted* her of the death-resulting offense.

Moreover, bodily injury is not only inherently foreseeable in most Section 242 cases, it is particularly foreseeable in a case involving the denial of medical care to an inmate with a serious and obvious medical need. This inherent foreseeability is illustrated by the facts of this case, where Officer Moody-Moore told Covington at various points that W.W. could not walk or talk, had urinated on himself, was eating out of the trash can, was disoriented, had hit his head (*i.e.*, suffered bodily injury), and needed medical help. PSR 6 (¶¶ 14-15). In other words, not only was Covington aware that W.W. was exhibiting symptoms that foreseeably lead to injury, but she was aware that the victim had in fact suffered bodily injury and was at substantial risk of continuing to do so. The rationale of *Meany* is accordingly inapplicable because, unlike in that case, bodily injury was an eminently "foreseeable result" here and no proximate-cause instruction was necessary. 2024 WL 3907286, at *11.

2. No additional hindsight instruction was required.

Covington has not raised a substantial question as to her requested instruction stating that, in determining whether a prison official has acted with deliberate indifference, the jury should not apply

"hindsight's perfect vision." Mot. 21. This is not a close question. Covington cites no Supreme Court or Fourth Circuit precedent to support this language—indeed, the language of Covington's requested instruction comes from a 2007 civil case from the Eighth Circuit. *See* Mot. 21 (citing *Lenz v. Wade*, 490 F.3d 991, 993 n.1 (8th Cir. 2007)). Further, and as the district court noted, the court's deliberate-indifference instruction "already called for a finding of 'actual knowledge' and thus substantially covered the issue of concern." Doc. 414, at 4; *see also* Doc. 317, at 42 (requiring jury to find that Covington "had actual knowledge of the risk of harm to the inmate," and that she "recognized that her actions were insufficient to mitigate the risk of harm to the inmate arising from his medical needs").

3. The district court's willfulness instruction was correct.

Likewise, the district court's willfulness instruction does not raise a substantial question. Covington argues the instruction was deficient because it did not require the jury to find that she acted "with a bad or evil purpose." Mot. 21-24 (citation omitted). This is not a close question—no case law requires such a finding under Section 242. To the contrary, and as the district court explained, it has been settled law

for over half a century that Section 242 merely requires proof that the defendant possessed "the specific intent to do something the law or constitution forbids." Doc. 414, at 9 (citing *Screws v. United States*, 325 U.S. 91, 107 (1945)); *see also ibid.* (explaining that "[n]o binding case law exists to compel the Court to include 'evil purpose' as part of the definition of 'willfulness,' nor is that language essential to the instruction" (citing *Hager*, 721 F.3d at 184)).

That is precisely the finding that the jury was instructed to make here. Doc. 317, at 44 ("A person acts 'willfully' when that person acts voluntarily and intentionally, with the specific intent to do something that the law forbids, or with the specific intent to fail to do something the law requires."). Circuit case law applying Section 242 confirms the correctness of the district court's instruction. Doc. 414, at 9 (citing *United States v. Cowden*, 882 F.3d 464, 474 (4th Cir. 2018), and Jury Instructions (Doc. 98), *United States v. Legins*, 3:19-cr-104-DJN (E.D. Va. 2020)).

Further, Covington's stated reason for this instruction—that "the [c]ourt should have ensured that the jury was aware that a defendant could not accidentally or negligently cause an inmate serious injury or

death"—is entirely addressed by the court's explicit instruction that "[n]egligence or inadvertence does not constitute deliberate indifference." Mot. 22; Doc. 317, at 42.

B. Covington fails to identify any error in the denial of her motion to sever, let alone a substantial question of law or fact.

The district court properly rejected Covington's motion for severance because (1) the defendants were properly joined under Federal Rule of Criminal Procedure 8(b); (2) considerations of judicial economy, fairness, and efficiency strongly favored a joint trial; and (3) Covington failed to establish the "strong showing of prejudice" necessary to warrant severance under Federal Rule of Criminal Procedure 14. *United States v. Branch*, 537 F.3d 328, 341 (4th Cir. 2008) (citation omitted). Covington's arguments in her motion are factually and legally unsupported, and consequently, they evince no substantial question of law or fact as to whether the court should have imposed the "drastic measure[]" of severance. *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

1. First, joinder of Covington and her two codefendants, Farley and Blackwell, was proper. An indictment may join "2 or more

defendants if [those defendants] are alleged to have participated . . . in the same series of acts or transactions, constituting an offense or offenses." Fed. R. Crim. P. 8(b). Separate offenses are considered acts within the same series if they are "unified by some substantial identity of facts or participants." *United States v. Haney*, 914 F.2d 602, 606 (4th Cir. 1990) (citation omitted). As this Court has explained, "Rule 8 permits very broad joinder" and its requirements are not "onerous." *United States v. Cannady*, 924 F.3d 94, 102 (4th Cir. 2019) (alteration, citation, and internal quotation marks omitted).

Here, each of the three defendants was charged with the same crime against the same victim—namely, deliberate indifference to W.W.'s serious medical needs, which resulted in his injury and death. Doc. 34, at 1-4. Their alleged offenses took place in the same place, occurred close in time, and arose from the same set of operative facts. The separate offenses were thus unified by a more-than-substantial identity of facts and participants.

In her motion, Covington insists that because (1) there was no allegation of a conspiracy, and (2) the defendants' shifts and duties did not overlap, joinder was improper. Mot. 24-25, 30. However, the

district court correctly rejected these same arguments. First, "Rule 8(b) does not require a common goal or conspiracy." Doc. 134, at 7 (quoting *United States v. Ferrarini*, 9 F. Supp. 2d 284, 292 (S.D.N.Y. 1998), and citing *Haney*, 914 F.2d at 606); *see also Haney*, 914 F.2d at 606 (stating that although "severance usually is not granted when there was a criminal conspiracy . . . this does not mean that severance is required or even preferred when no conspiracy has been charged"). Second, "Rule 8(b) includes no contemporaneity requirement." Doc. 134, at 6. The word "transaction" in Rule 8(b) "impl[ies] a connection of logical relationship rather than immediateness." *Ibid.* (quoting *United States v. LaRouche*, 896 F.2d 815, 830 n.5 (4th Cir. 1990)). Covington cites no authority to the contrary.

Second, Covington failed to carry her heavy burden of showing that the "drastic measure[]" of severance was necessary. *Zafiro*, 506 U.S. at 539. Properly joined defendants ordinarily should be tried together. *United States v. Ali*, 735 F.3d 176, 192 (4th Cir. 2013) ("[W]e have found it decidedly preferential to try jointly defendants who have been indicted together."); *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012) (stating that "severance pursuant to Rule 14 is rarely

granted" when defendants are properly joined under Rule 8(b)). The default rule strongly favoring joint trials of properly joined defendants is "designed to promote economy and efficiency and to avoid a multiplicity of trials." *Zafiro*, 506 U.S. at 540 (citation and internal quotation marks omitted). For multiple reasons, jointly trying the three defendants together achieved such aims here. The evidence proving several elements was identical for all three defendants (*e.g.*, that W.W. had a serious medical need; W.W. suffered injury and died as a result of officials' nonintervention; and this matter was within the jurisdiction of federal investigators). Separate trials would have required most of the trial witnesses to testify repeatedly about many of the same facts. And any jury weighing the criminal charges against Covington, Farley, and Blackwell—collectively or individually—was entitled to the full picture of W.W.'s approximately 27-hour medical ordeal.

Further, the district court was correct to "quickly dispose[] of" Covington's only argument in favor of severance. Doc. 134, at 9. Covington argued below, and in her Motion here, that evidence of W.W.'s suffering, injury, and death after she left the facility—namely, surveillance footage and other evidence documenting the last hours of

W.W.'s life—would have been inadmissible had she been tried alone. Doc. 134, at 9-10; Mot. 27-29. But as the court explained, evidence of W.W.'s injuries and death was highly relevant in a case in which Covington was charged with an offense resulting in injuries and death. *See* Doc. 132 ("The [contested] evidence . . . could be seen to furnish the requisite necessary link in the (alleged) causal chain from the Defendants' alleged actions or omissions to W.W.'s ending up in the suicide watch cell where he fell and died."). Evidence showing W.W.'s symptoms was also relevant to proving that W.W. had a "serious medical need," a "sub-element[]" of the Section 242 count, and to proving that Covington's statements (which were that a correctional officer had reported W.W. engaging in merely anodyne behaviors, rather than reporting the serious symptoms that had been observed) were false for purposes of the Section 1001 count. *Id.* at 6-7.[3] At

[3] Further, even if this evidence were admissible only against a codefendant, "it would take an exceptional case to grant a severance." *United States v. Oloyede*, 933 F.3d 302, 312 (4th Cir. 2019) (rejecting argument that defendants would be prejudiced by the disparity in evidence against them and the other codefendants, and by the "unfair spillover effect on [their] right to a fair trial" (alteration in original; citation omitted)); *United States v. Holohan*, 436 F. App'x 242, 245 (4th Cir. 2011) (rejecting defendant's argument that an "enormous and

bottom, Covington's argument is that because she had not been physically present during W.W.'s time in the suicide observation cell, where he suffered further injury and died, evidence of W.W.'s condition at that time should not have been admitted against her. Taken to its logical conclusion, however, this argument would mean that, in any death-resulting case, whether under Section 242 or another statute (*e.g.*, 21 U.S.C. 841(b)(1)(A) (criminalizing drug distribution resulting in death)), the government may not offer evidence of the victim's death to prove any of the relevant elements so long as the defendant left the scene before the victim expired. That cannot be the law.

Nor was this evidence unfairly prejudicial, because the defendants had "a full opportunity to place the . . . evidence in[] the proper context." Doc. 132, at 9. Indeed, at trial, Covington argued at length that she should not be held responsible for events that occurred after she left the

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inflammatory amount of evidence" presented against a codefendant undermined the guilty verdict against the appellant). The jury was expressly instructed to consider "each count separately" (Doc. 415, at 25), and this Court must presume the jury followed that instruction, *see United States v. Brewbaker*, 87 F.4th 563, 584 (4th Cir. 2023) ("We can only overcome the presumption that a jury follows instructions in extraordinary situations." (citation and internal quotation marks omitted)), *cert. denied*, 145 S. Ct. 544, and 145 S. Ct. 545 (2024).

facility, and the jury's acquittal on the death-resulting element suggests that the jury carefully considered that argument. Covington's assertion that the jury was not "able to compartmentalize" the admissible evidence (Mot. 30), thus fails for multiple reasons: first, the evidence *was* admissible against her, and, second, the jury's verdict, acquitting some defendants of some counts, suggests that the jury carefully distinguished among different counts and different defendants.

C. Covington's challenge to the materiality element of her false-statements charge does not raise a substantial question.

Covington has not raised a substantial question of law or fact as to the government's proof of the materiality element in the false-statements charge, on which the district court previously ruled in its denial of her motion for acquittal for that conviction. *See* Doc. 414, at 19. Covington argues that the government failed to carry its burden of proving that her false statements were material because prosecutors did not ask the case agent whether those statements "impact[ed] [the agent's] decisions or influence[d] [her] decisions or actions[.]" Mot. 34. Covington cites no case law, and the government is aware of none,

requiring prosecutors to ask a particular question to establish this element, or any other element.

Indeed, that specific question was unnecessary here. As the court explained, "there was substantial evidence presented for a reasonable jury to conclude that Ms. Covington's false statements had 'a natural tendency to influence, or [were] capable of influencing, the decision-making body to which [they were] addressed.'" Doc. 414, at 19 (alterations in original) (quoting *United States v. Smith*, 54 F.4th 755, 769 (4th Cir. 2022) (describing materiality standard)). Specifically, the jury reasonably "could have inferred the materiality of the false statements" because the evidence at trial (*e.g.*, the testimony of Officers Moody-Moore and Barnes) suggested that Covington's statements were "aimed at misdirecting agents and their investigation" away from herself. *Id.* at 20 (quoting *United States v. Fondren*, 417 F. App'x 327, 335-336 (4th Cir. 2011) and *Smith*, 54 F.4th at 772). The jury could have inferred this purpose from Covington's false statements, which related directly to her deliberate indifference towards W.W.; the case agent's testimony that she was investigating the circumstances of W.W.'s death; and the case agent's testimony establishing that

Covington's statements were inconsistent with other witness testimony. *Id.* at 19-20.[4] Any "statements aimed at misdirecting agents and their investigation," even if they are not likely to succeed in doing so, "satisfy the materiality requirement." *Id.* at 20 (quoting *Smith*, 54 F.4th at 772). Accordingly, Covington's motion fails to demonstrate the existence of any substantial question of law or fact as to whether the jury had sufficient evidence to find that Covington's lies could have redirected the federal investigation into W.W.'s tragic death and therefore were material under Section 1001.

[4] Covington's assertion (Mot. 36) that "[t]he jurors had no information about how federal criminal investigations work" is belied by the record. 12/13/24 Trial Tr. 1398-1402 (case agent testimony about her agency's jurisdiction, how federal criminal investigations work generally, and how she proceeded in this investigation).

CONCLUSION

For the foregoing reasons, Covington's Motion for Bail and Stay of Sentence Pending Appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR BAIL AND STAY OF SENTENCE PENDING APPEAL:

(1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A), because the document, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f), contains 4991 words; and

(2) complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365, in 14-point Century Schoolbook font.

s/ Barbara A. Schwabauer
BARBARA A. SCHWABAUER
Attorney

Date: June 4, 2025