

11-4450-cr

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

STEPHANIE SHEPARD AKA Craze AKA Crazy,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF AND SPECIAL APPENDIX FOR
DEFENDANT-APPELLANT**

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JURISDICTIONAL STATEMENT

Stephanie Shepard appeals from the final judgment disposing of all charges against her entered by the United States District Court for the Southern District of New York on October 20, 2011. *United States v. Shepard*, S2 10-CR-653 (GBD). SPA-1-12.¹ Shepard filed a timely notice of appeal on October 21, 2011. A-1401. The district court had jurisdiction pursuant to 18 U.S.C. § 3231. This Court has jurisdiction pursuant to 28 U.S.C. §1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the verdict must be overturned because there was insufficient evidence to prove by a preponderance of evidence that venue was proper in the Southern District of New York?
2. Whether the evidence was insufficient to prove beyond a reasonable doubt that Shepard was guilty of participation in the charged conspiracy to distribute 1,000 or more kilograms of marijuana in the Southern District of New York?

STATEMENT OF THE CASE

After moving to Brooklyn, New York, in 2005, Shepard met and began a romantic relationship with a man known to her as Connor Adams. A-1150-52. In fact, Adams' name was not Connor, but David, and he was not the chef he

¹ References to "SPA" indicate the Special Appendix. References to "A" indicate the Appendix.

professed to be (A-1152), but the aspiring and increasingly successful mastermind of a large-scale marijuana distribution ring operating in the Eastern District of New York. Shepard later learned of his marijuana dealing but saw only a fraction of his activities. A-1308-09.

Adams and his coconspirators based their organization in Williamsburg, Brooklyn. A-157, 182, 184, 197, 322-23. Although they traveled to New Jersey and to Connecticut (and once to a truck stop in upstate New York) to pick up large loads of marijuana that had been shipped from California or Canada (A-562, 867-68), the record is absolutely silent as to the paths taken on those occasions. The evidence showed that, other than a single delivery in the summer of 2008—well before the testimony placed Shepard into the conspiracy—and Adams' arrest on December 2, 2009 in Manhattan, no part of the conspiracy occurred or was properly venued in the Southern District of New York. *See, e.g.*, A-151, 157, 160, 163, 219, 220, 245, 261, 318, 451-52, 471-72, 497, 546, 562, 598, 602, 736, 755, 760, 769, 773, 818, 865, 869, 967.

After the romantic relationship between Shepard and Adams ended in 2008, Adams, whom his former coconspirators described as a “puppeteer” and a “master manipulator” (A-683-84), grew increasingly worried that Shepard would alert the authorities as to his illegal activities. A-611. In order to prevent this from

happening, Adams gave Shepard money and gifts. *See, e.g.*, A-611. He also began to “set [Shepard] up” in case the gifts were not enough. A-498.

At some point in early 2009, Adams told his coconspirators that he was going to make Shepard work for her money and that he was going to bring her into the conspiracy in order to create a “conflict of interest” so that she would not be able to turn him in without endangering herself. A-908-09, 915, 921, 928.

- He told several coconspirators that Shepard was working for him and that she sold more marijuana than they did. A-337, 764.
- He made up a nickname for her and wrote it (often incorrectly spelled) on slips of paper that were included in bags of money that he gave to his coconspirators to count. A-877, 906-07.
- He told his former coconspirators that he was meeting Shepard to pick up money or drop off marijuana under circumstances in which they could not verify either that she was the person involved or the object of the transaction. A-607-10, 758, 760, 793.

On December 2, 2009, Adams was arrested with three coconspirators while transporting a substantial amount of marijuana. A-117, 193. One by one, Adams’ remaining coconspirators were arrested as well. A-180-81, 185, 189-90. In each case, federal agents found substantial amounts of money and, in most cases, stores

of marijuana and drug paraphernalia in the coconspirators' apartments or in storage locations searched at the coconspirators' direction. A-181, 186, 190.

Nearly six months after Adams' arrest, on the day that he was scheduled to be released on bail—based in part on Shepard's agreement to act as a suretor for him—federal agents arrested Shepard at her home and charged her *in a separate indictment* with participation in the same conspiracy as that charged against Adams and his coconspirators. A-12. Agents never sought a search warrant for Shepard's home. A-230, 265, 269. Her home was never searched and no evidence of any drug activity or related paraphernalia was ever found with respect to Shepard. A-191-92.

Shepard pled not guilty and a trial was held before the Honorable George B. Daniels in the Southern District of New York from June 20, 2011 through June 27, 2011.

Shepard now argues that the conviction must be overturned **first** because the evidence was insufficient to demonstrate that venue in the Southern District of New York was proper by a preponderance of the evidence and **second**, that the evidence presented at trial was insufficient to establish her participation in the charged conspiracy beyond a reasonable doubt.

STATEMENT OF FACTS

I. Background

Stephanie Shepard was arrested on May 26, 2010 and indicted on one count of conspiracy to distribute and possess with the intent to distribute 1,000 or more kilograms of marijuana in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846 “[f]rom in or about 2008 up to and including on or about December 2, 2009.” A-12.² On June 27, 2011, Shepard was convicted on that count after a six-day jury trial before the Honorable George B. Daniels. A-1282. On October 20, 2011, the Honorable Judge Daniels sentenced her to the statutory mandatory minimum of 10 years of imprisonment. A-1397. Shepard is currently serving that sentence.

II. The Evidence At Trial Concerning Venue

The evidence at trial consisted mainly of the testimony of four cooperating witnesses—Dente Ryan, David Montero, Brian Evins, and Kelly Campbell³—and two government agents—Christopher Quinn from the Department of Homeland

² Throughout the prosecution of this action, the government sought to add charges of making false statements in violation of 18 U.S.C. § 1001. These counts were severed by the Honorable George B. Daniels at a pretrial hearing on May 10, 2011, and subsequently dismissed at the request of the government after the jury’s verdict of guilty on the conspiracy count. A-1399-1400.

³ The cooperators are referred to hereafter by last name only, as is David “Connor” Adams.

Security, Immigration and Customs Enforcement, and Eric Baldus from the Drug Enforcement Administration.⁴

The evidence proved the existence of a large-scale marijuana distribution ring located at all times in Williamsburg, Brooklyn, headed by David Adams, known to Shepard as “Connor.” The evidence showed that Adams and his coconspirator lived in Brooklyn and that all of their drug-related activity occurred either in Brooklyn or outside of New York State. *See, e.g.*, A-151, 157, 160, 163, 219, 220, 245, 261, 318, 451-52, 471-72, 497, 546, 562, 598, 602, 736, 755, 760, 769, 773, 818, 865⁵, 869, 967.

The government offered almost no evidence of activity in furtherance of the conspiracy outside the Eastern District of New York. **First**, Campbell testified that at one point during the spring or summer of 2008 (at least six months before Shepard became involved, according to other coconspirators’ testimony⁶) he had assisted Adams with a delivery to a location in Manhattan that he could not

⁴ Shepard’s landlady, Shaolin “Julie” Chou, also testified for the government but her testimony is not relevant to the issues addressed on appeal. The defense offered testimony of several of Shepard’s relatives, which is included where applicable in the following pages.

⁵ Campbell testified that his apartment at the time he made the delivery in Manhattan was in Williamsburg, Brooklyn. A-865. Later, after the end of the conspiracy, Montero testified that he had met Campbell at Campbell’s apartment in the West Village in Manhattan. A-631. However, that meeting occurred after the end of the conspiracy (if it indeed occurred at all). Campbell did not mention the meeting in his testimony. *See* Argument Section I(E)(3), *infra*, at 51.

⁶ *See, e.g.*, A-334 (Ryan’s testimony that Shepard entered the conspiracy in January 2009).

identify. A-865. He explained that he had been “new to the area.” A-867.

Second, Campbell and Montero testified that they had made trips to New Jersey⁷, Connecticut, and a truck stop in upstate New York to pick up marijuana. A-562, 867-68. No timeframe was provided for these pick-up trips, nor were the witnesses questioned about the details of the trips, about the routes they had taken on these trips, or about whether they had even passed through the Southern District of New York.

Third, Agent Quinn, Agent Baldus, and Evins testified that Adams, Evins, and two additional coconspirators had been arrested on December 2, 2009 at 14th Street and First Avenue in Manhattan. A-105-106, 113, 766, 774, 976. Evins testified, however, that the coconspirators had not intended to go into Manhattan and that they had had no intention of conducting any activity in the Southern District of New York on that date. A-811-12. Moreover, Shepard was not present at that arrest, nor, as demonstrated by the text messages from that date on the cellular telephone attributed to Shepard, was it reasonably foreseeable to her that the coconspirators would travel into the Southern District of New York. A-175-78.

In contrast to the limited and mainly unsubstantiated testimony about the Southern District of New York, a preponderance of the evidence proved that the conspiracy was venued in the Eastern District of New York, where the

⁷ Although, again, Campbell testified that he “simply didn’t know exactly where we were.” A-867.

coconspirators lived and where their drug-related activities occurred. *See, e.g.*, A-151, 157, 160, 163, 219, 220, 245, 261, 318, 451-52, 471-72, 497, 546, 562, 598, 602, 736, 755, 760, 769, 773, 818, 865, 869, 967.

A. Evidence of the Conspiracy in Williamsburg, Brooklyn

The evidence proved that Adams had lived first in Williamsburg, Brooklyn, and then in Long Island City (after October 2009). A-197, 322-23. He had run his marijuana distribution business from his home, using various storage facilities in Brooklyn and Queens. A-157, 182, 184.

1. Dente Ryan's Testimony

Ryan testified that he began helping Adams distribute marijuana in September 2008. A-321. He would sometimes go with Adams to the storage facilities to help him pack boxes for the customers and drive with Adams to deliver the boxes to different locations where people would meet them on the street and climb into Adams' van to pick up marijuana. A-312, 330. The meetings occurred "[j]ust on the side of the street" "[i]n the Williamsburg area," in Brooklyn. A-451-52. The people would "come to the car, meeting [*sic.*] real fast, and take off." A-451.

Ryan's memory as to which individuals received deliveries of marijuana was unclear. In discussing whether Adams had delivered marijuana to Montero ("Dirty"), Ryan first explained that because Montero had access to the storage

facilities, Adams didn't bring him marijuana. A-451. However, when counsel asked, "Who else besides allegedly my client did David Adams bring marijuana to?" Ryan replied, "B Rad, Dirty, Crazy," but then backtracked, saying, "He would bring it to storage, where Dirty had access to it." A-451. As to the individuals who had received deliveries from Adams, Ryan then testified, "There's some people, I don't know their names." A-451.

2. David Montero's Testimony

Montero testified that his involvement had increased over time. A-559. "In the earlier days, I would help [Adams] drop off pot, pick up pot. And then later, he helped me obtain fake IDs, and then I helped him get a garage and a couple of storage spaces—or art spaces is what we used to call them." A-559. Montero also helped Adams sort the marijuana, "drop off, pick up, drop off cash, pick up cash . . ." A-567. Montero helped Adams with his business because "the more I helped him, the more he would give me a price break when he would front me marijuana." A-567-58. After Adams was arrested, Montero cleaned out the storage facilities. A-564.

3. Brian Evins' Testimony

Evins testified that Adams kept marijuana in Williamsburg, Brooklyn at the Starr Avenue storage facility and at his house. A-755-56. Adams would package marijuana at his apartment or at the storage facility. A-757.

Evins always met Adams in Williamsburg, Brooklyn to get marijuana. A-736. “Typically, I would call him to pick up marijuana, and as I got there to pick up marijuana, he would ask me to drive him around before I could get my load.”

A-756. Evins would also meet Adams outside a Laundromat. A-737.

I would get inside his van. . . . I would give him the money that I owed him which he would then put his hands down, feel the money, touch the money to see if that is about the money that I had owed him. Then he would drive around the block and discuss with me the quantities of marijuana that I was receiving, as well as the prices associated with each pound of marijuana.

A-737.

Evins helped Adams deliver marijuana “approximately from July through December” of 2009. A-754-55. He testified that coconspirators including Campbell and Ryan (but not Montero) also helped deliver marijuana. A-755. Evins helped deliver “[b]ecause I owed [Adams] a great deal of money. I got robbed for a good amount of marijuana. . . . I had loyalty to David and I owed him money. He said I had to.” A-755.

B. Evidence of Marijuana Drop-Offs and Pickups Outside of Brooklyn

Although the cooperating witnesses testified that they had picked up marijuana in locations including New Jersey (A-561), Connecticut (A-562), and upstate New York (A-562), no testimony was offered about the paths that the

vehicles had taken to those pick-ups and no evidence demonstrated that the coconspirators had passed through Manhattan.

Montero testified that he had assisted with marijuana pick-ups “seven to ten times.” A-559, 563. Marijuana would be shipped from Canada or California to “somewhere in New Jersey” where the coconspirators would drive to pick it up before taking it to Bushwick, Brooklyn to sort. A-559, 562, 570. Montero testified that individuals including Campbell, the “Jamaican,” “Neal,” and Evins were involved in these trips. A-560, 562.

Campbell also described several trips that he had made with Adams to pick up marijuana in New Jersey but was not asked and never stated that he had travelled through Manhattan or any part of the Southern District of New York in order to commit these acts. A-866-67. He picked up marijuana for Adams 10 to 15 times between the summer of 2008 and the 2009 arrest. A-869. Again, there is no evidence in the record as to the paths that the vehicle(s) took when traveling from Brooklyn to New Jersey or to Connecticut. Nor is there any evidence in the record from which to establish that Shepard was aware of the marijuana’s origins or of the conspirators’ arrangements with respect to the pick-ups.

C. The Summer 2008 Delivery

Campbell testified that he began working for Adams “in the early summer months of 2008” and that one of the first things he did for Adams was to make a

nighttime delivery of marijuana at his request. A-864-65. Campbell was unable to describe the circumstances of that delivery clearly, however, stating only that, “Connor had contacted me . . . asking if I would drive with him to make a delivery from Brooklyn to Manhattan.” A-865. “We went from Williamsburg to Manhattan. I don’t know exactly what street. I am certain it was in Manhattan.” A-865.⁸

Campbell couldn’t remember the exact circumstances of the delivery or whether anyone had actually gotten into the van. “Although it was nighttime, and I was in the driver’s seat, and it was a minivan. So whoever had gotten into the back, *if they in fact had*, I wouldn’t be able to see them.” A-866 (emphasis supplied). No other witness testified that marijuana was dropped off (or picked up) in Manhattan or elsewhere in the Southern District of New York.

D. The December 2, 2009 Arrest

Agent Quinn testified that he arrested Adams, Evins, and two additional conspirators, Trenton Gary and Dennis McCabe, on December 2, 2009 at 14th Street and First Avenue in Manhattan. A-105-106, 113. The arrest followed a period of surveillance during which Agent Quinn observed the vehicles in which the conspirators were driving through Williamsburg, Brooklyn, perform counter-

⁸ Campbell has “been a marijuana user and I have on a handful of occasions taken other drugs, such as cocaine, prescription painkillers.” A-861. He smoked marijuana intermittently starting at age 16. A-862.

surveillance actions and drive over the Williamsburg Bridge into Manhattan. A-112-13.⁹

On the night of the arrest, Agent Quinn obtained a statement from Evins, who stated, “That he was asked by Adams to go with him to Long Island that day and retrieve some stolen marijuana, that Adams was his source of supply for marijuana, that Adams was a large-scale marijuana dealer, that the marijuana came from out West.” A-255.

Evins testified at trial that he was arrested on December 2, 2009, in Manhattan. A-766, 774. He had not intended to go over the Williamsburg Bridge and did not want to go to Manhattan because he did not want to have a shootout in a populated area. A-811-12. No other individual who was arrested on December 2, 2009 testified at trial.

III. The Insufficient Evidence At Trial Concerning Shepard’s Participation in the Charged Conspiracy

A. The Evidence At Trial

The evidence as to Shepard’s conduct was extremely limited. Ryan, a longtime coconspirator of Adams’ and a felon facing a 20-year to life sentence for a second drug offense, testified that, on five or six occasions, he had dropped off cardboard boxes of marijuana, each weighing approximately 20 pounds, in the

⁹ The agents initiated surveillance in Westchester County, but the majority of the observed action occurred in Suffolk County and then in Kings County. A-106-13.

stairwell of Shepard's apartment in Brooklyn from January 2009 through the end of the summer of 2009. A-312, 320-21, 334-36, 434-37, 442. Ryan further testified that he delivered 20 to 40 pounds at a time "at least once a week, when I was in town" and that he came to New York once a month. A-336, 407.

Contradicting Ryan as to the scale of Shepard's involvement, however, Montero and Evins testified that, on one occasion each, they had observed Shepard either dropping off or receiving U.S. currency or marijuana from Adams in the back of a van. A-608, 760, 793. Montero testified that he had observed Shepard with a fully closed bag, which he estimated contained approximately \$50,000 in cash. A-608-10, 635-36.¹⁰ Evins, who had only met Shepard once (A-722), testified that he had seen Shepard get into the back of a van with tinted windows once, at night, but that he recognized her from the few seconds when the overhead light in the car had come on when the door opened. A-786-87. Evins stated that he had seen Shepard pick up approximately five pounds of marijuana on that occasion. A-759-60. The only meeting between Evins and Shepard occurred outside her apartment in Williamsburg, Brooklyn. A-760.

B. Deliveries to Shepard—The Conflicting Accounts

As summarized above, each of the cooperating witnesses provided a different account of Shepard's participation in the charged conspiracy.

¹⁰ But Campbell, one of the organization's money counters, testified that it would have been impossible to tell how much cash was in a closed bag. A-919-21.

1. Dente Ryan's Testimony

On direct examination, Ryan testified that, between January 2009 and the end of the summer of 2009, he delivered marijuana to Shepard "10 to 12, something like that" times. A-334-35. At the end of the summer, Adams "cut her off" because "her money was short." A-335. "Shortly after that, he gave her 20 pounds and she lost it or something happened like that where it wasn't recovered," and that was the last time that Adams gave Shepard marijuana. A-335.

Ryan delivered 20 to 40 pounds of marijuana to Shepard at a time, "[a]t least once a week, when I was in town."¹¹ A-336. "A couple times I ran the boxes upstairs. Most of the time I would just ring the door and she would buzz the door and I would set the boxes beside the door and she would come get them." A-336.

Q: Do you know if anyone else delivered to the defendant?

A: Well, Dave [Adams] did and B Rad [Brian Evins]. B Rad went to see her once, I remember.¹²

Q: Do you know if anyone else delivered to her, that you're aware of?

A: No, I'm not sure. Nobody that I can remember.

A-336.

¹¹ Later, he changed his estimation again, saying that he "knew there were times that [Shepard] was [dealing a hundred pounds] a week" because he had "dropped of 40 [pounds] twice a week. And I was only in town a couple times." A-446.

¹² Tellingly, however, Evins did not testify that he had ever gone to see Shepard at her home.

On cross-examination, Ryan significantly reduced the number of deliveries that he had made to Shepard, saying that he had been in Shepard's apartment in Brooklyn only "four or five" times. A-434. Although he testified that he took the boxes of marijuana upstairs for Shepard "[t]wo or three, maybe four" times, he was unsure of what floor her apartment was on. A-442, 434. On occasion, he would take marijuana upstairs and "just inside the front door" to Shepard. A-508.

After a few months, Ryan testified, he began to drop the boxes of marijuana in the lobby because "after a while, it was, it was, it was an inconvenience to go upstairs . . . because David was always in a rush." A-443. He would leave "[o]ne or two boxes" that were "big enough to fit 20 [pounds] . . . in each one" in the lobby. A-434-35. The total size of the boxes would be about 2 ½ feet wide by 3 feet high. A-435-36. Ryan would "make sure she was coming downstairs before I left." A-436. He would ring the bell and she would come downstairs because "she knew I was coming." A-436.

Q: How did she know you were coming?

A: Because she buzzed the door.

A-436.

"Her and Dave already figured . . . out" how she knew when to expect Ryan. A-436. She would take the boxes upstairs herself. A-437. Ryan wouldn't say hello to her. Dave would wave at her from the car. A-438, 507. "I was standing

there [in front of the door], hold the door open, till I seen her. Then I would tell her, here it is. And everything.” A-439.

Alternatively, Ryan would “jump out [of Adams’ van] and hit [the] buzzer.” A-506. Shepard would “buzz from upstairs [and] open the door. . . . I would open the door and push the boxes in and wait for her. . . . I would leave the door open so that nothing happen to the boxes, and I would wait to see her come downstairs and then take off.” A-507. The deliveries occurred [a]lways at night . . . [b]etween 8 and 10.” A-439.

2. David Montero’s Testimony

In contrast to Ryan, Montero testified that he never witnessed Shepard with any marijuana. Montero first testified that he had observed Adams giving Shepard money in the fall of 2009. A-607. “I believe it would be October.”¹³ A-608.

When asked to describe what had occurred, however, he stated that *Shepard* had been the one giving money to *Adams*:

Q: Please explain the circumstances.

A: At that time Connor was living in Long Island City . . . And he called me up and asked if I wanted to get lunch and run some errands with him, and I obliged. And he picked me up. And then while we were driving he said, I have to stop by Crazy’s house to pick up some money.” [. . .] We pulled over [on Grand Street]. And Connor called Crazy. Crazy came down or

¹³ But see Ryan’s testimony that Adams “cut her off” and did not give her any more marijuana after the end of the summer of 2009.” A-335 and *supra* at III(B)(1).

came from behind, approached Connor's van and opened the sliding door of the Caravan and jumped in the backseat. So all three of us were in the Caravan parked on the side of the road. She handed Connor a bag of money.

A-608.

This exchange occurred in the early afternoon. A-609. He knew that the bag she set down was money because "I could just tell from seeing lots of bags of money like that. Connor told me he had to pick up money, so I knew in the back of my mind that he was going to pick up money." A-609. "I didn't see any bills. All I saw was on the inside of the bag—it was a paper bag, and on the outside was one of those grocery store plastic bags. By the way it plopped down, you could tell—I could tell it was money." A-609. "From my understanding, it was probably like this big, so it could have been like up to \$50,000 or so."¹⁴ A-610, 637.

3. Brian Evins' Testimony

Evins testified that he met Shepard once in November 2009, and that he "believe[d]" it had been before Thanksgiving. A-783, 786, 821. On that occasion, Evins helped package marijuana once at Adams' apartment in Long Island City, the conspiracy's operational base.¹⁵ A-758. "[O]nce I got inside his apartment, I

¹⁴ But see footnote 10, *supra*.

¹⁵ The evidence showed that Adams' apartments, first in Williamsburg, Brooklyn and then in Long Island City, Queens were the operational bases for the conspiracy. A-157, 182, 184, 197, 322-23.

had him give me some marijuana to smoke; and after I finished smoking, I helped him put together bags and boxes of marijuana for his customers.” A-758. Adams “told me I was finally going to get to meet his ex-girlfriend Crazy.” A-758. Adams packaged ten pounds of marijuana for Crazy but then “he said, wait a minute, I got to take some of these out. She was just robbed for ten pounds of marijuana. So he took approximately five pounds of marijuana out of the black laundry bag.” A-759, 793.

Adams told Evins that she was robbed by a guy named Frank a month or two earlier. A-764, 794.

Q: And then he was giving her pot in the interim?

A: Yes.

Q: And she was paying back?

A: Yes.

Q: But then he decided not [to] give her the ten pounds?

A: No, yes.

A-794.

Evins drove Adams to drop of the packages in Williamsburg. A-759-60. “David said, She is coming out, and she got into the passenger side of the back rear minivan, handed David a bag of money, and she took her bag of marijuana or her

laundry bag and then left the van.” A-760, 793. Evins knew that she had dropped off money because

the bag of money was placed in between David and I, and David frequently, any time we would pick up marijuana or when the customer would drop off money, he would actually put his hands down and feel the bag to check to see if there was money in the bag and approximately how much money was in the bag. He could tell that by feeling the bag, just by touching it.

A-761.

Evins claimed that, after this single meeting in Brooklyn, he was “absolutely” able to recognize Shepard again even though the meeting had occurred when it was evening and dark outside and the van had tinted windows, “but the lights still remained on in the van.” A-722, 786. Moreover, although Evins was smoking pot while driving on that one occasion, he testified that his judgment had not been impaired. A-787.

C. The Cooperating Witnesses’ Conflicting Testimony About Quantities

Each of the cooperating witnesses offered sworn, inconsistent testimony that minimized his own involvement while increasing the amounts of marijuana sold by the other members of the conspiracy.

For example, Ryan testified that B-Rad (Evins) “would do a hundred [pounds per week] on occasions.” A-445. Evins, however, stated that he “never” sold 100 pounds per week, and that if Ryan had stated that he did, “That was

untruthful.” A-831.¹⁶ Similarly, Ryan testified that Montero was selling 40 to 60 pounds *per week*. A-445. Montero testified, however, that he received five pounds from Adams at a time at first and that later, at the height of his involvement, he was selling 40 to 50 pounds *per month*. A-558, 625, 646. As to his own involvement, on at least one occasion, Ryan testified that he received only one to two pounds from a particular shipment. A-508-10. Evaluating the same document, Montero explained that, “Where it says 1 to 2, that could be 1 to 200 because Connor wrote that. I’ve seen that before where Connor would write a 1 pack, but it is really 100 pounds for someone.” A-577-78. In this context, Ryan’s statement that Shepard was “doing [a hundred pounds per] week” (A-446) must be viewed with several grains of salt.

D. The Cellular Telephones

The coconspirators used multiple prepaid cellular telephones throughout the course of the conspiracy to communicate with each other because Adams “only wanted to communicate via the prepaid phones.” A-913. Cellular tower data offered by the government demonstrated that the cellular towers in Williamsburg, Brooklyn, were the most frequently used towers and that cellular phones look for the towers closest to their location. A-1126, 1136.

¹⁶ See also A-841-42: “Q. And you bought a lot of pot, right? A. Right. Q. And you certainly weren't dealing a hundred pounds a week? A. That's impossible. Q. If anybody said that, they would be a liar, right? A. That's right.”

The government alleged that a particular cellular number (the “0325 number” or the “Crazy” number) was associated with Shepard and that text message sent and received from that number proved Shepard’s involvement in the conspiracy. However, as discussed below, the government’s theory contained significant logical gaps.

1. Kelly Campbell’s Testimony

Campbell, who programmed the phones (A-885), explained the system:

I would basically go to a store, typically a Best Buy or even, for example, a T-Mobile store and buy unprogrammed, unactivated phones for use within the group. . . . I actually would program the phone numbers, activate them and program the nicknames or abbreviated nicknames of the people that they are going to go to.

A-885.

Campbell programmed phones “[o]n many occasions” and always according to Adams’ specific instructions. A-887, 908, 910. Adams would decide who the phones would go to. A-887. “He would always give them to us, and we would cycle through them every few weeks or sometimes every couple of months. So us as the group, we were definitely the recipients a lot of times of these phones.” A-887. Campbell also testified that, “I am sure that many of [the phones] went to people I didn’t know because, just based on the sheer number of phones that I was being asked to buy and to prepare.” A-887. There were “at least 40” phones. A-908.

“There was no real protocol [for recycling the phones]. I wouldn’t say at a certain point the emphasis was given more to giving out new phones.” A-909.

“Whatever you did with your now expired phone, it was your own business.” A-910. It was understood that you should get rid of the drug phones. A-912. The phones were not registered to the users’ real names “[b]ecause they were using those phones for illegal activities.” A-912-13.

2. Dente Ryan’s Testimony

Ryan testified that the phones were “encrypted Blackberries” that Adams told him came from Panama. A-461-62. The Blackberries “come programmed” by Adams. A-462. Examining his seized cell phone, Ryan explained that he had received the preprogrammed phone from Adams.

Q: Did you put these contacts into this phone?

A: No.

Q: Do you know who did?

A: Dave [Adams] did.

Q: So when you received the phone, it had these contacts in it already?

A: Yeah.

A-376.¹⁷

¹⁷ Ryan’s phone has no contact for Crazy. A-375-76.

Adams decided what names to associate with what numbers and “he knows who usually communicates to him.” A-463. “Wayne”¹⁸ would buy the phones for Adams. A-464-65. “We’ve bought a lot of phones like that [prepaid] in the early 2000s.” A-465. Whitey programmed the phones. A-515.

There were “quite a few” phones over time, and Adams would replace them—“cheap phones like these right here, some of them he would save or just give them away.” A-463. He would give them to “[f]riends or whoever he wanted.” A-463. Ryan didn’t know who Adams had given phones to. A-464.

3. Agent Christopher Quinn’s Testimony

Agent Quinn testified that drug dealers typically use “cheap . . . throwaway phones . . . prepaid phones.” A-207. Agent Quinn believed it “possible” that “A guy like David Adams could go into a store and put anyone’s name on [the registration for a prepaid phone].” A-207. Most of the 13 prepaid phones that were recovered at the December 2, 2009 arrest didn’t have any subscriber information although “some of the phones from McCabe and Evins may have come back to their names.” A-208. Some of the seized cell phones were password protected and the agents were not able to examine them.¹⁹ A-237-38.

¹⁸ Ryan identified the picture of Campbell as the individual he called “Wayne,” “Whitey,” or “Whiney.” He was unable to state how the nickname was spelled and did not know Campbell’s true name. A-464-65.

¹⁹ This point was confirmed by Agent Baldus as well. A-1074.

E. Shepard's Prepaid Phone

The government asserted that Shepard had used a prepaid phone associated with a number ending in 0325 to communicate with Adams concerning marijuana transactions. A-167. The government offered evidence that a cellular phone used by Adams contained a contact, "Crazy," identified with the 0325 phone number. A-167, 179-80. The government further offered evidence that Adams had exchanged text messages with the user of the 0325 phone on December 2, 2009 concerning marijuana. A-175-78.

The evidence showed that the 0325 phone had been registered to Shepard on April 13, 2009. A-247, 1083. However, Shepard's niece, Gabrielle Shepard, testified that she had activated the phone on a brief trip to New York after Shepard had lost her own phone. A-989-90. Gabrielle Shepard explained that she had registered the phone to Shepard but had used her own email address—a fact reflected on the subscriber information record admitted in evidence and shown to the jury. A-174²⁰, 990, 999. The evidence also showed that the actual identity of the subscriber might not have been accurate because the 0325 number was associated with a prepaid phone:

Search results indicate one or more of the numbers listed on the above-referenced legal demand may belong to Boost, a Sprint prepaid phone service. Our office maintains subscriber information for Boost accounts, but this information is often inaccurate or incomplete, as no

²⁰ Government Exhibit 216A.

identification is required when purchasing a Boost phone. Payment information is also available for Boost accounts. However, this information, while accurate, may not be complete. As Boost records are prepaid, no bill reprints are available. We are able to provide call data details for IDEN and CDMA Boost accounts for the most recent 18- to 24-month period.

A-246-47.

Confirming that Shepard's phone had indeed been contemporaneously misplaced, phone records for the non-prepaid phone registered to Shepard showed a gap in the call record between April 12, 2009 and April 17, 2009. A-1086-88. Moreover, the first two calls made from Shepard's phone on April 17, 2009 were to customer service and then to voicemail. A-1088.

Following the activation of the 0325 prepaid cellular phone, no calls or text messages were sent from or received by that number until October 2009. A-1114. The phone associated with the 0325 number was never recovered, and Agent Quinn testified that, "I don't know where that phone is or was." A-239.

F. The "Crazy" Nickname

The cooperating witnesses offered conflicting testimony as to Shepard's alleged nickname, "Crazy."

1. Dente Ryan's Testimony

Ryan testified that he first met Shepard in September of 2008. A-320. The first time Ryan met Shepard, he went with Adams to her house at Manhattan Ave and Grand Ave in Williamsburg, Brooklyn. A-330, 332. Adams "put some money

on the counter.” A-331. Ryan wasn’t paying attention to how much money it was. A-331. Adams introduced Shepard to Ryan by saying, “This is Crazy. Her name is Stephanie.” A-332. In response, Shepard said, “I don’t hide my Crazy.” A-332, 422. Ryan testified that, “Everybody, everybody up there, the main people around them” referred to Shepard as “Crazy.” A-332.²¹

Ryan explained that he learned that Shepard was called Crazy because after she and Adams broke up, she “came to one of his parties one time and was upset that she wasn’t invited, and she broke out the window . . . of the white truck, and that she came at him with a tire iron.” A-333.

2. David Montero’s Testimony

Montero testified that, “Soon after I became friends of David Adams, Connor, I met his girlfriend or his ex-girlfriend who is Stephanie, and I met her shortly after I met Connor [in May of 2007].” A-601. He met Shepard for the first time at Adams’ apartment on Memorial Day. A-601. She did not have a nickname at that time. A-603. Montero testified that the party at which Shepard earned the

²¹ However, Ryan’s testimony as to the identity of individuals in the conspiracy was not always consistent with reality. In explaining who of the coconspirators referred to Shepard as “Crazy,” he stated that, “Nelson used to call her that.” A-332.

Q: Who is Nelson?

A: Brian Evins. A-333.

In fact, however, Nelson [Aybar] and Brian Evins are two distinct individuals (and, indeed, both have been prosecuted in the related case). Evins’ nickname was “B-Rad.” A-751.

nickname “Crazy” was on July 4, 2007. A-603-04. Contradicting Ryan, Montero testified that the nickname was not used to Shepard’s face.

Q: Did you ever hear anyone call her by the name Crazy in her presence?

A: No.

A-605.

However, Montero also testified that, “Everyone knew her as Crazy, so if you address her or Connor were to speak about her, you would address her by Crazy.” A-605.

3. Brian Evins’ Testimony

Evins testified that Adams called Shepard “Crazy” because “He had mentioned on one occasion that she had smashed out all the windows on his van and that she had threatened to call the police a couple of times.” A-763. Evins did not know whether Ryan, Henry, Campbell, Montero, or Gary referred to Shepard as Crazy in front of her. A-765.

4. Kelly Campbell’s Testimony

Campbell, who never met Shepard, testified that, “Crazy was the nickname that I had learned was basically the nickname for David’s ex-girlfriend” and that he had been told that her first name was Stephanie. A-877.

Examining an example of a slip of paper that had the word “craze” written on it, Campbell stated that, “Craze” “in that particular context” is Crazy, even though “[t]he word, in and of itself, is ‘craze.’” A-907.

G. Shepard’s Arrest

Agent Quinn testified that he had never seen Shepard with any marijuana, with any money, or with any cellular telephones. A-191-92. When he arrested her, at her apartment on May 26, 2010, he did not see a money counter, a heat sealer, or any paraphernalia associated with the marijuana business. A-192. At the arrest, after Shepard denied permission to search the apartment, Agent Quinn walked through the apartment but didn’t look closely in the rooms. A-265-66.

Agent Quinn did not attempt to get a search warrant for Shepard’s residence. A-230. He testified that, “We did not have any current information to show that Shepard was involved in narcotics trafficking at that point. Essentially, her source of supply, Mr. Adams, was arrested and incarcerated and did not have information that was current.” A-265. He had “no current information that Stephanie Shepard was involved in a conspiracy—any conspiracy.” A-269.

He “did not think that we would have” been able to obtain a search warrant.” A-273. “[T]he fact that there were six months in between when we arrested her supplier and . . . [when we] got an arrest warrant for Shepard, that, in my opinion, would be unable to get a search warrant. We would be unable to show that there

was still, still evidence of Shepard's marijuana trafficking in that apartment at that time." A-279-80.

Notably, however, when agents arrested Montero, just two weeks before they arrested Shepard, they searched his home and found money and marijuana. A-180-81. Montero later explained that he had found another source of marijuana within two months after Adams was arrested. A-644-47.

H. The Arrests of the Cooperating Witnesses

On December 2, 2009, Adams, Evins, Gary, and McCabe were arrested in the process of transporting 145.7 kilograms of marijuana. A-117, 193. Shortly thereafter, agents searched Adams' apartment on Jackson Avenue in Queens, New York, and seized additional marijuana, money, cellular telephones, banking records, notebooks, ledgers, and other paperwork. A-117-18, 131, 133, 136-37, 139, 157.

The remaining coconspirators, including Ryan, Montero, and Campbell, were arrested starting in April 2010. A-180-81, 185, 189-90. In each case, agents searched the residences and found drug paraphernalia, marijuana, U.S. currency, or some combination thereof. A-181, 186, 190.

Agent Quinn learned from Montero about a storage facility in Queens where Montero "had some merchandise that he was holding on behalf of the organization." A-182, 564. In the search of that storage facility, agents recovered

money counters, heat sealers, documents, tasers, brass knuckles, and collapsible batons. A-183. The materials were seized on August 24, 2010. A-184. Where necessary, Agent Quinn obtained search warrants to search the storage facilities. A-230.

I. Was Shepard Framed?

The record contains evidence that Adams, whose coconspirators agreed was a manipulator and “like a puppeteer” gave Shepard gifts and money and that he took actions to insure that she would not alert the police about his illegal activities. The evidence also showed that, because he was afraid that she would turn him in, he brought her into the conspiracy to make it impossible for her to do so. *See, e.g.*, A-611, 623²², 908-09²³, 914-15²⁴. In fact, Adams “told [Campbell] that he had decided to try getting her into the loop so to speak to sell her marijuana so that it would be a conflict of interest for her to want to get him in trouble, because now she was, too, benefitting financially from the situation.” A-921.

²² Montero’s testimony that Adams paid Shepard’s bills because she threatened to call the cops and gave her \$10,000 and a BMW to “put out a fire.”

²³ Campbell’s testimony that Adams brought Shepard into the organization so that she couldn’t turn him in.

²⁴ Campbell’s testimony that Adams wanted to keep his distance from Shepard.

1. Dente Ryan's Testimony

Ryan testified that he had witnessed Adams give Shepard cash and explained that, "Later he told me her real estate work hasn't been doing that well, so he was helping her out." A-334. Adams also gave her a black BMW. A-334.

He testified that in January 2009, "[Adams] was telling me that he was tired of giving her money, that she should work, do some work." A-334-35. Adams "would joke with some of the guys saying that he has a girl doing work for him." A-337. Ryan understood this to be a reference to Crazy. A-337. However, Ryan also testified that Adams made "[s]ome things" up." A-434.²⁵

²⁵ Ryan and the other cooperating witnesses related that Adams called Ryan "Taz" because "He said I reminded him of a Tasmanian devil. . . . Jokingly, he would say, like, if I ever got upset, I might get crazy like that devil, start spinning around." A-316. Ryan thought that Adams called him that to "paint me in a different picture than I was, to make him look good. . . . Kind of let people know that he had somebody to watch his back, help him out if something bad happened." A-316. Adams introduced him as Taz to "people that didn't know me." A-316. Ryan had seen the name "Taz" written on papers related to the "business." A-316-17.

In addition, Ryan testified that he had heard a rumor about himself that he killed two people but "I didn't kill nobody." A-404. He "[n]ever shot at anybody, never pointed a gun at anybody" but "Dave was spreading that rumor around." A-405, 418-19.

Montero confirmed that Ryan was "like [Adams'] muscle, his tough guy that he paled around with." A-574. He was "[s]omeone to instill fear in people, to have this tough guy walking around with him all the time, especially when he is working with people, dropping off pot to people. Taz was his co-pilot on those trips." A-574. Montero heard that Ryan "used to sell a lot of pot in Seattle and that two guys tried to rob him and that he shot one of them—he shot both of them. One died there and the other, I think died or didn't die but he went to the hospital. And he did jail time for it. But I don't know if that story is true or not, because it

On August 25, 2010, three months after Shepard had been arrested, Ryan encountered Adams in court. A-498. He recalled that on that date:

Q: Did you ever tell the government that David said [B-Rad] or Jamaican set Stephanie up?

A: Yeah. He had whispered that to me.

A-498.

2. David Montero's Testimony

Montero knew that:

After that July 4th incident [when Shepard allegedly earned the nickname "Crazy"], Connor thought [Shepard] was unpredictable and he was scared that she was going—that she posed a threat, that she might actually call the cops on him, so he gave her his black BMW that she was using at that time. . . . And he also said that he was going to pay her bills. And I think he paid her bills for sometime. And he also said that he was going to give her some—maybe give her like \$10,000 just to—

A-611.

Adams told Montero that he was giving the BMW and the \$10,000 to Shepard “essentially to put out a fire. Connor felt that she was unpredictable and

could have been a story to instill fear in me.” A-575, 677. Adams assured Montero that Ryan was crazy and tough. A-678, 708. Montero later found out that Adams had lied to him about Ryan having committed a double homicide. A-679.

Evins testified that Dente Ryan “believed he was” tough and “carried himself toughly.” A-814. Adams told Evins that Ryan had killed two people “but that’s just a hearsay.” A-814.

he took the threat of her calling the cops on him serious. So he wanted to mitigate the situation, and so by mitigating he thought he could pay her, he could gift her the car.” A-623.

Simultaneously, Montero testified that Adams felt bad for Shepard because she had no money. A-709-10.

Montero “didn’t think she knew” Adams’ real name. A-709. “No one knew his name.” A-709.

In addition, Montero testified that Adams was “a good manipulator” who decided what information to tell whom. A-682.

Q: Could we agree now that he was very manipulative?

A: Yeah. He could manipulate.

Q: He could manipulate just about anybody, right?

A: I wouldn’t say that.

Q: But he was a good manipulator?

A: Sure.

Q: Would you consider him someone to be like a puppeteer?

A: Sure.

A-683-84.

3. Brian Evins' Testimony

Evins testified that Adams had mocked Evins by saying that “my ex-girlfriend Crazy can sell more marijuana than you. She has a customer who will buy 100 [pounds] at one time.” A-764. Simultaneously, however:

Q: Isn't it true that David Adams or Connor, as you knew him, would make fun of my client Stephanie Shepard?

A: That is true.

Q: Isn't it true that y'all would laugh that Stephanie never even knew his name, right?

A: I wouldn't like to use the word “laugh.” He laughed.

Q: He would laugh, right? He would laugh that Stephanie didn't even know his name?

A: Unfortunately, that's true.

A-843-44.

4. Kelly Campbell's Testimony

Campbell testified that Adams is the type of person who thinks a few steps in advance. A-924-25. Adams was very concerned about being arrested and “took natural precautions all the time.” A-926. He was careful about what he left lying around. A-926.

There were times when Campbell was counting money that there were no slips of paper in the bags of money to identify who they had come from. A-906. In such cases, Adams would “just randomly” tell Vernal [Henry, another one of the

money counters,] an amount and a name. A-906. Campbell counted money from Crazy “only a handful of times—three times, possibly four times that I could say for certain” “in the summer months of 2009, in July or August.” A-889-90.

Sometime in the summer of 2009, Adams “did express concern” that Shepard was going to turn him in and said that dealing drugs with Shepard “was part of his solution.” A-908-09, 915, 928.

“[Adams] wanted to keep his distance from Stephanie” because

He expressed a fear that she was going to get him in trouble; that she was going to tell the cops, so to speak, about what he was doing. . . . He told me that he had decided to try getting her into the loop so to speak to sell her marijuana so that ht would be a conflict of interest for her to want to get him in trouble, because now she was, too, benefitting financially from the situation.

A-914, 921.

SUMMARY OF THE ARGUMENT

The conviction must be set aside **(1)** because venue was improper in the Southern District of New York and **(2)** because the evidence at trial was insufficient to prove Shepard’s involvement in the charged conspiracy.

ARGUMENT

I. The Conviction Must Be Set Aside Because Venue Was Improper in the Southern District of New York.

The conviction must be set aside and Shepard must be released from custody forthwith because venue did not lie in the Southern District of New York. A

criminal defendant has the right to be tried in the “district wherein the crime shall have been committed[.]” U.S. CONST. AMEND. VI; *see* Fed. R. Crim. P. 18 (“Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed.”).

In determining the propriety of venue, “[T]he Supreme Court has repeatedly recognized that a cautious interpretive approach is ‘more consonant with the considerations of historic experience and policy which underlie [the venue] safeguards in the Constitution.’” *United States v. Saavedra*, 223 F.3d 85, 92 (2d Cir. 2000) (citing *United States v. Johnson*, 323 U.S. 273, 275, 65 S.Ct. 249 (1944)). “[V]enue provisions in Acts of Congress should not be so freely construed as to give the Government the choice of a ‘tribunal favorable’ to it.” *Saavedra*, 223 at 92 (citing *Travis v. United States*, 364 U.S. 631, 634, 81 S.Ct. 358 (1961)).

A. Preservation of the Issue

This Court has “held that defendant's ‘[o]bjections to venue are waived unless ‘specifically articulated’ in defense counsel's motion for acquittal.’” *United States v. Bala*, 236 F.3d 87, 95 (2d Cir. 2000) (citing *United States v. Potamitis*, 739 F.2d 784, 791 (2d Cir. 1984); *United States v. Grammatikos*, 633 F.2d 1013, 1022 (2d Cir. 1980)). *See also United States v. Pughe*, 09-4163-CR L, 2011 WL 4494228 (2d Cir. Sept. 29, 2011) (same).

Shepard's challenge to venue in the Southern District of New York was preserved by counsel's argument for an acquittal pursuant to Federal Rule of Criminal Procedure 29, in which counsel argued that venue was improper because of the lack of evidence of any overt acts in furtherance of the conspiracy within the Southern District of New York. A-1177.

B. Standard of Review and Evidentiary Standard

A challenge to venue is reviewed *de novo*. *United States v. Svoboda*, 347 F.3d 471 (2d Cir. 2003); *United States v. Ramirez*, 420 F.3d 134, 139 (2d Cir. 2005). "This Court reviews the sufficiency of the evidence as to venue in the light most favorable to the government, crediting 'every inference that could have been drawn in its favor.'" *United States v. Geibel*, 369 F.3d 682, 696 (2d Cir. 2004) (citing *United States v. Rosa*, 17 F.3d 1531, 1542 (2d Cir. 1994)).

To withstand a challenge to venue, the government must prove, "by a preponderance of the evidence, that some part of the crime was committed within the district of the prosecution." *United States v. Middlemiss*, 217 F.3d 112, 121 (2d Cir. 2000) (citing *United States v. Maldonado-Rivera*, 922 F.2d 934, 968 (2d Cir. 1990)). *See also United States v. Smith*, 198 F.3d 377, 382 (2d Cir. 1999) (same); *United States v. Stephenson*, 895 F.2d 867, 874 (2d Cir. 1990) (same).

C. Determination of Venue in General

Venue is proper in “any district in which [an] offense was begun, continued, or completed.” 18 U.S.C. § 3237(a). *See also Saavedra*, 223 at 89. “Possession of narcotics with intent to distribute may be a ‘continuing’ offense within the meaning of 18 U.S.C. § 3237, and hence may be prosecuted in any district in which the possession was begun, continued, or completed.” *United States v. Garcia*, 112 F.3d 506 (2d Cir. 1997) (internal citation omitted).

“Venue is proper only where the acts constituting the offense—the crime’s ‘essential conduct elements’—took place.” *United States v. Tzolov*, 642 F.3d 314, 318 (2d Cir. 2011) (referencing *United States v. Rodriguez-Moreno*, 526 U.S. 275, 280, 119 S.Ct. 1239 (1999)). “[T]he site of a charged offense must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *United States v. Cabrales*, 524 U.S. 1, 5, 118 S. Ct. 1772, 1775 (1998) (quoting *United States v. Anderson*, 328 U.S. 699, 703, 66 S.Ct. 1213, 1216 (1946)).

“Where a federal statute defining an offense does not explicitly indicate where a criminal act is deemed to have been committed, the site of a charged offense must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *Svoboda*, 347 F.3d at 482-83 (quoting, in part, *United States v. Cabrales*, 524 U.S. 1, 5, 118 S.Ct. 1772, 141 L.Ed.2d 1 (1998) (quotation marks omitted)). “[V]enue is proper in a district where (1) the defendant intentionally or knowingly causes an act in furtherance of the charged offense to occur in the district of venue or (2) it is foreseeable that such an act would occur in the district of venue.” *Id.*

at 483.

United States v. Geibel, 369 F.3d 682, 696 (2d Cir. 2004).

“[W]here an offense was committed ‘must be determined from the nature of the crime alleged and the location of the act or acts constituting it.’” *Saavedra*, 223 at 95 (Cabranes, J., dissenting) (citing *Cabrales*, 524 U.S. at 6–7, 118 S.Ct. 1772). “As [the Supreme Court] said in *United States v. Lombardo*, 241 U.S. 73, 36 S.Ct. 508, 60 L.Ed. 897 (1916), ‘where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done.’” *Rodriguez-Moreno*, 526 U.S. at 281, 119 S. Ct. at 1244 (citing *Lombardo*, 241 U.S. at 77, 36 S.Ct. 508).

The necessary inquiry, therefore, involves two steps: A court “must initially identify the conduct constituting the offense (the nature of the crime) and then discern the location of the commission of the criminal acts.” *United States v. Rodriguez–Moreno*, 526 U.S. 275, 279, 119 S.Ct. 1239, 143 L.Ed.2d 388 (1999). According to the Supreme Court, venue is proper only where an act constituting an “essential conduct element” of the charged offense occurs. *Id.* at 280, 119 S.Ct. 1239. As we stated in our most recent case concerning venue . . . a prosecution may take place “*only* in those districts in which an act occurs that the statute at issue proscribes.” *United States v. Smith*, 198 F.3d 377, 384 (2d Cir.1999) (emphasis added); *see also United States v. Brennan*, 183 F.3d 139, 147 (2d Cir.1999) (holding that “prosecution under the mail fraud statute is permissible only in those districts in which a proscribed act occurs”).

Saavedra, 223 F.3d at 95 (Cabranes, J., dissenting).

In a case involving substantive criminal acts, “there is no single defined policy or mechanical test to determine constitutional venue. Rather, the test is best

described as a substantial contacts rule that takes into account a number of factors—the site of the defendant's acts, the elements and nature of the crime, the locus of the effect of the criminal conduct, and the suitability of each district for accurate factfinding.” *United States v. Reed*, 773 F.2d 477, 481 (2d Cir. 1985).

D. Venue in a Conspiracy

The Supreme Court “has long held that venue is proper in any district in which an overt act in furtherance of the conspiracy was committed, even where an overt act is not a required element of the conspiracy offense.” *Whitfield v. United States*, 543 U.S. 209, 218, 125 S. Ct. 687, 693 (2005). *See also United States v. Shabani*, 513 U.S. 10, 115 S.Ct. 382 (1994) (holding that proof of an overt act is not required to establish a violation of the drug conspiracy statute, 21 U.S.C. § 846).

The Second Circuit “has held that venue may lie in any district in which the conspiracy was formed or in any district in which a conspirator committed an overt act in furtherance of the criminal scheme.” *United States v. Rommy*, 506 F.3d 108, 119 (2d Cir. 2007) (citing *Geibel*, 369 F.3d at 696; *Smith*, 198 F.3d at 382; *United States v. Ramirez–Amaya*, 812 F.2d 813, 816 (2d Cir. 1987)). *See also Saavedra*, 223 F.3d at 90 (a conspiracy prosecution may be venued in the district where the conspiracy was entered into or where the overt acts were performed).

“The defendant need not have been present in the district, as long as an overt

act in furtherance of the conspiracy occurred there.” *United States v. Naranjo*, 14 F.3d 145, 147 (2d Cir. 1994) (citing *Hyde v. United States*, 225 U.S. 347, 362-63, 32 S.Ct. 793, 800-01 (1912)). Thus, this Court has found “constructive presence in a state” may give rise to venue. *Hyde*, 225 U.S. at 363, 32 S. Ct. at 800.

An “overt act” is “[a]n outward act, however innocent in itself, *done in furtherance of a conspiracy*.” Black’s Law Dict. 2d Pocket Ed. (2001). *See also United States v. Tzolov*, 642 F.3d 314, 320 (2d Cir. 2011) (“An overt act is any act performed by any conspirator for the purpose of accomplishing the objectives of the conspiracy. The act need not be unlawful; it can be any act, innocent or illegal, as long as it is done in furtherance of the object or purpose of the conspiracy.”); *Geibel*, 369 F.3d at 696 (same).

A defendant who joins an existing conspiracy with knowledge as to its general scope and purpose may be held liable with respect to conspiratorial acts committed in furtherance of the conspiracy prior to his joining, *see, e.g., United States v. Blackmon*, 839 F.2d 900, 908 (2d Cir. 1988); *United States v. Guillette*, 547 F.2d 743, 751 (2d Cir. 1976) (defendant may join a conspiracy “later and incur liability for the conspiracy’s unlawful acts committed ... before ... his adoption of the conspiracy”) (dictum), *cert. denied*, 434 U.S. 839 (1977); *United States v. Davis*, 666 F.2d [195], 200 [(5th Cir. Unit B 1982)], and those acts may be attributable to the defendant for purposes of venue as well, *see, e.g., id.*

Garcia, 112 F.3d at 506.

Venue may also be laid “in a district through which conspirators passed in order to commit the underlying offense.” *Tzolov*, 642 F.3d at 320. However,

although “a defendant need not have ever been physically present in a district for a conspiracy charge against him to be venued there,” the law “asks that the overt act's occurrence in the district of venue have been reasonably foreseeable to a conspirator.” *Rommy*, 506 F.3d at 120, 123 (referencing *United States v. Rowe*, 414 F.3d 271, 279 (2d Cir. 2005); *Naranjo*, 14 F.3d at 147).

E. Application: There Was No Venue In The Southern District of New York

The evidence at trial demonstrated the existence of a large-scale marijuana distribution conspiracy centered in Williamsburg, Brooklyn—in the Eastern District of New York. The storage facilities used by the conspirators, the pickup and drop-off locations used by them, and the residences of all but one conspirator were located in the Eastern District.²⁶ *See, e.g.*, A-151, 157, 160, 163, 182, 184, 197, 219, 220, 245, 261, 318, 322-23, 451-52, 471-72, 497, 546, 562, 598, 602, 736, 755, 760, 769, 773, 818, 865, 869, 967. Even the government's evidence of cellular telephone towers used by the conspirators' cellular telephones during the time period of the conspiracy demonstrated that the use was centered in Williamsburg, Brooklyn. A-1126.

Because Shepard was charged separately from Adams, Evins, Ryan, Montero, Campbell, and the other conspirators in this case, the evidence offered to

²⁶ And, as to Campbell, whose apartment was in Manhattan, he testified that at least during part of the conspiracy, he had been living in Brooklyn. A-865.

prove the suitability of the Southern District as a venue for trial should be determined by reference to the evidence as to Shepard's participation in the charged conspiracy or the actions of coconspirators that were reasonably foreseeable to her. The government offered extremely limited evidence as to venue, none of which is sufficient to demonstrate by a preponderance of the evidence that venue for the government's case against Shepard was proper in the Southern District of New York.

There is no evidence at all that Shepard was ever present in the Southern District of New York or that any act in furtherance of the conspiracy in the Southern District was reasonably foreseeable to her. *See Rommy*, 506 F.3d at 120, 123. The evidence on which the government primarily relied to prove Shepard's involvement consisted of text messages sent and received between October and December 2009 on a prepaid cellular phone that had been registered to Shepard by her niece, Gabrielle Shepard, on April 13, 2009 and then not used between April and October. A-989-90, 1113-14, 1121. The evidence showed only that the text messages sent from and received on the prepaid phone, from October through December 2009, had accessed cellular towers in Williamsburg, Brooklyn. A-1125-26.

Because, as set forth above, all of the conspirators working with Adams lived in or near Williamsburg (with the partial exception of Campbell), the cellular

phone evidence alone is insufficient to prove that Shepard was the person using the phone. Simultaneously, however, the cellular phone evidence—as further evidenced by the cellular tower data—simultaneously conclusively demonstrates that, if Shepard was indeed the person using the phone, she was not in the Southern District of New York and had no intention of committing any act in the Southern District of New York.

Moreover, even giving the government every benefit of the doubt, the evidence was insufficient to prove by a preponderance of the evidence that venue was proper in the Southern District of New York. Taken one at a time, none of the three instances of contact with the Southern District of New York to which the conspirators testified proved that venue existed in the Southern District of New York. Accordingly, the lawful and proper venue by a preponderance of the evidence was the *Eastern*, not the Southern, District of New York.

1. The Drop-Off in Manhattan

Kelly Campbell testified that he began working for Adams “in the early summer months of 2008.” A-864. He testified that one of the first things he did for Adams was to make a delivery of marijuana at his request. A-865. Campbell was unable to describe the circumstances of that delivery clearly, however, stating only that, “Connor had contacted me . . . asking if I would drive with him to make a delivery from Brooklyn to Manhattan.” A-865. “We went from Williamsburg to

Manhattan. I don't know exactly what street. I am certain it was in Manhattan.”
A-865. It was night. A-865. Campbell couldn't remember whether anyone had actually gotten into the van, “Although it was nighttime, and I was in the driver's seat, and it was a minivan. So whoever had gotten into the back, *if they in fact had*, I wouldn't be able to see them.” A-866 (emphasis supplied).

Campbell did not know Shepard and had never met her. A-877. However, Dente Ryan's testimony as to Shepard's participation in the conspiracy established that the earliest she was alleged to have been involved was in January 2009:

Q: When was the first time that you delivered marijuana to the defendant?

A: January 2009.

Q: Had David Adams said anything to you about her selling marijuana for him prior to that point?

A: No.

Q: How did you first learn that you were to deliver marijuana to her?

A: He was telling me that he was tired of giving her money, that she should work, do some work.

Q: When did he tell you that?

A: Around that time, January.

A-334-35.

Campbell also described several trips that he had made with Adams to pick up marijuana in New Jersey but was not asked and did not state that he had traveled through Manhattan or any part of the Southern District of New York in order to commit these acts. A-866-67. There is no evidence in the record as to the paths that the vehicle(s) took when traveling from Brooklyn to New Jersey or to Connecticut. Nor is there any evidence in the record from which to establish that Shepard was aware of the marijuana's origins or of the conspirators' arrangements with respect to the pick-ups.

Campbell's testimony as to a delivery that he made in the summer of 2008 to a location that didn't even recognize, is insufficient to establish that the delivery constituted an "overt act's occurrence in the district of venue [that was] reasonably foreseeable" to Shepard, especially because there was no evidence that she was part of the conspiracy at that time. *See Rommy*, 506 F.3d at 120, 123. Nor does the record contain any indication that Shepard was aware of the conspiracy's scope such that she should be held liable for the acts of coconspirators committed prior to the time she joined the conspiracy. *See Garcia*, 112 F.3d at 506.

Likewise, testimony that the coconspirators traveled to New Jersey and to Connecticut (A-562, 867-68), without any indication of the routes that they took or whether they passed through the Southern District of New York is insufficient to establish either that any act in furtherance of the conspiracy occurred in the

Southern District of New York or that the coconspirators passed through the District in order to commit the underlying offense. *See Tzolov*, 642 F.3d at 320.

In the cases cited in *Tzolov*, venue was found based on coconspirators' commercial airplane travel over pre-established flight paths. In one such case, venue was found in the Southern District of New York where a coconspirator, flying from John F. Kennedy Airport in the Eastern District of New York to Aruba passed over Jamaica Bay, "a body of water in Queens, New York, and within the Southern District." *Tzolov*, 642 F.3d at 320 (citing *United States v. Duque*, 123 Fed. Appx. 447, 449 (2d Cir. 2005)). In this case, however, there is no evidence as to the paths that the coconspirators traveled in their vehicles—only the fact that their destinations were outside both the Eastern and the Southern Districts of New York. In each case, it would have been possible for the coconspirators to have reached their destinations without ever passing through the Southern District of New York. The record is silent.

Therefore, because it cannot be established by a preponderance of the evidence that the coconspirators traveled through the Southern District of New York to commit the underlying offense of picking up marijuana, venue was not proper in the Southern District of New York.

2. The December 2, 2009 Arrest

The evidence also showed that the conspirators' presence in Manhattan, where they were arrested on December 2, 2009, was the product of happenstance or accident. Brian Evins testified that the decision to go into Manhattan on December 2, 2009 was made once Evins "realized that [they] were being tailed." A-773. "I felt it was much safer for us to travel into Manhattan in case anything was to happen. Manhattan was more of a populated area where there would be less likely to be a shootout or anything of that nature." A-774. He had not intended to go over the Williamsburg Bridge and did not want to go into Manhattan because he did not want to have a shootout in a populated area. A-811-12. No other individual who was arrested on December 2, 2009 testified at trial. Therefore, the coconspirators had no intent to commit any act in furtherance of the conspiracy in Manhattan, and the fact of their being on a Manhattan street corner that they had reached with the sole motivation of evading their followers should be insufficient to find that venue was proper in the Southern District of New York as to Shepard.

The evidence also demonstrated that, assuming *arguendo*, that the cellular phone ending in 0325 was in fact being used by Shepard on December 2, 2009, she had no idea what was occurring or where Evins and the others were at the time of their arrest. Agent Quinn read the text messages between the 0325 phone number

and the phone number being used by Adams on the date of arrest in relevant part as follows:

Q. If you could read the next two text messages.

A. No. 347-623-0325, contact name Crazy, date 12/2/09, time 2:40:41 p.m., status read, folder inbox, type incoming, "U around?" The letter "U" and the word "around," question mark.

Q. And the next, I think you can just read from the time on, since the other information is identical.

A. OK. Also 12/2/09, 3:13:48 p.m., incoming message, "Hello," Question mark.

* * *

Q. And if you could read the last message on this page.

A. At 4:24:12 p.m. there is an incoming message that says, "OK," period. "7 good," period. At 4:24:25 p.m., there is an outgoing message that says "K," just the letter K. And then at 6:35:06 p.m., there is an incoming message that says "7 still good," question mark. "I don't want anyone waiting," period. "It takes 30 minutes for him to get here," period.

Q. If you could turn to the next page and read the last – are those the last three messages in this exhibit?

A. Yes. Yes, they are.

Q. If you could read the last three messages.

A. At 7:08:38 p.m., there is an incoming message that says, "He's on his way," period. "Will be here in 30," period. At 8:21:05 there's an incoming message that says, "I'm waiting over an hour," exclamation point. At 8:38:14 p.m., there is an incoming message that say, "What's going on," question mark, exclamation point. "Been waiting an hour," exclamation point.

A-175-78.

The text messages indicate that the person using the 0325 phone to send and receive text messages from Adams was unaware of his location on December 2, 2009 and was asking him where he was and what was happening. The messages demonstrate that, again, assuming *arguendo* that the person using the 0325 phone was Shepard, she had no idea where he was or that there was any reasonably foreseeable chance that he was in Manhattan or anywhere else in the Southern District of New York.

Therefore, Evins' testimony that the coconspirators went to Manhattan unintentionally and only to evade what they perceived to be surveillance, combined with the text messages sent from the 0325 phone number during the same time period, demonstrate that venue in the Southern District of New York was improper even if the Court finds that the coconspirators' travel to Manhattan constituted an intentional act because "the overt act's occurrence in the district of venue [was not] reasonably foreseeable" to any person in the conspiracy and certainly not to Shepard. *Rommy*, 506 F.3d at 120, 123.

3. The Meeting at Campbell's Apartment

The only evidence as to a meeting in the Southern District of New York concerned an event after the end of the conspiracy.²⁷

Montero testified that after he learned that Adams had been arrested, he met with Nelson Aybar, Campbell, and others at a bar in Williamsburg. A-628. Aybar told them that there were boxes of marijuana at Adams' apartment. A-629. Campbell volunteered to go to the apartment to retrieve the marijuana and "I volunteered to give him moral support and drive with him in separate cars." A-629, 703. Montero parked "blocks away" and later learned that Campbell had gone to the apartment, seen two people there, and gotten scared away. A-630. Montero was waiting in his car. A-630. According to Montero, Campbell then "got back in his car, and he drove to his place in East Village." A-631. "Once I got news that he left, I drove to East Village and we spoke on the street in front of his apartment, and he described what happened." A-631.

In contrast, Campbell did not testify that he had gone back to Manhattan after his attempt to enter Adams' apartment. Instead, he explained that he had gone to the apartment at Nelson Aybar's request. A-895. "I went there, went through the bottom front door up the elevator to his apartment. And when I actually got there, the inside bolt was locked, and I kind of just got spooked and I

²⁷ Shepard was charged with participation in the alleged conspiracy through December 2, 2009—the date of Adams' arrest. A-12.

turned around and left. . . . I could see a couple of young people, and I never knew who they were inside of there.” A-896. Dave Montero followed in his own car, “but then he was too afraid to try to go in there, so he basically just followed me there and then he took off.” A-896.

This evidence fails to establish that there was ever a meeting at Campbell’s apartment in the East Village. However, even if such a meeting did in fact occur, it would have occurred after the end of the charged conspiracy and is, therefore, irrelevant to the determination of whether venue was proper in the Southern District of New York as to the charged conspiracy. *See, e.g., United States v. Chieppa*, 241 F.2d 635, 638 (2d Cir. 1957) (statements made by a conspirator after the end of the conspiracy as set forth in the indictment were not made in furtherance of the conspiracy).

* * *

Therefore, for the reasons set forth above, the evidence at trial was insufficient to prove by the required preponderance of the evidence based on the law in this Circuit that venue was proper in the Southern District of New York, and the verdict must be overturned.

II. The Evidence Was Insufficient to Convict Shepard of the Conspiracy to Distribute 1,000 or More Kilograms of Marijuana in the Southern District of New York.

Even if the Court finds that the evidence was sufficient to establish venue in the Southern District of New York by a preponderance of the evidence, the evidence was insufficient to prove Shepard's participation in the charged conspiracy beyond a reasonable doubt.

An argument as to insufficient evidence "is cognizable under the Due Process Clause of the Fourteenth Amendment, which prohibits a criminal conviction 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime.'" *Greene v. Brown*, 06 CIV.5532 LAP GWG, 2007 WL 1589449 (S.D.N.Y. June 4, 2007) *report and recommendation adopted*, 06 CIV. 5532 LAPGWG, 2010 WL 1541429 (S.D.N.Y. Apr. 15, 2010) (citing *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068 (1970)).

In reviewing a challenge to the sufficiency of the evidence, the Court "view[s] the evidence in the light most favorable to the government, drawing all inferences in the government's favor and deferring to the jury's assessments of the credibility of the witnesses." *Garcia*, 112 F.3d at 506 (referencing *United States v. Stratton*, 779 F.2d 820, 828 (2d Cir. 1985); *United States v. LeRoy*, 687 F.2d 610, 616 (2d Cir. 1982)). The Court "must affirm the conviction 'so long as, from the inferences reasonably drawn, the jury might fairly have concluded guilt beyond a

reasonable doubt.” *Garcia*, 112 F.3d at 506 (citing *United States v. Giraldo*, 80 F.3d 667, 673 (2d. Cir. 1996)).

In order to prove a conspiracy, the government must present evidence from which it can reasonably be inferred that the conspiracy alleged in the indictment existed and that the defendant knowingly joined and participated in it. . . . Both the existence of the conspiracy and the defendant's knowledge may be established through circumstantial evidence.

Garcia, 112 F.3d at 506 (internal references omitted).

“In order to prove a single conspiracy, the government must show that each alleged member agreed to participate in what he knew to be a collective venture directed toward a common goal. The coconspirators need not have agreed on the details of the conspiracy, so long as they agreed on the essential nature of the plan.” *Geibel*, 369 F.3d at 689 (citing *United States v. McDermott*, 245 F.3d 133, 137 (2d Cir. 2001)). *See also United States v. Zichettello*, 208 F.3d 72, 100 (2d Cir. 2000).

However, “mere awareness does not satisfy the conspiracy requirement that two parties act in concert toward a common goal.” *Geibel*, 369 F.3d at 692 (referencing *United States v. Rosenblatt*, 554 F.2d 36, 38 & n. 2 (2d Cir. 1977)). To the contrary, “too little knowledge may undermine a conspiracy conviction.” *Zichettello*, 208 F.3d at 100 (referencing *United States v. Viola*, 35 F.3d 37, 44-45 (2d Cir. 1994), *abrogated on other grounds*).

Moreover, although ““with regard to liability for *conspiracy*, a defendant may be legally responsible for acts of coconspirators prior to that defendant’s entry into the conspiracy,”” *United States v. Bloome*, 777 F. Supp. 208, 211 (E.D.N.Y. 1991) (citing *Blackmon*, 839 F.2d at 908), “when a defendant is charged with a single conspiracy among multiple members, and the proof at trial shows that he conspired with some, but not all, of those members, . . . the essential question is whether the jury convicted the defendant on evidence unrelated to his own alleged activity,” *Geibel*, 369 F.3d at 692-93 (internal citations omitted).

A. Application: The Evidence Was Insufficient to Prove Shepard’s Involvement in the Conspiracy Beyond a Reasonable Doubt.

The evidence was insufficient to prove Shepard’s participation in the charged conspiracy to distribute and possess with the intent to distribute 1,000 or more kilograms of marijuana beyond a reasonable doubt. **First**, the evidence was insufficient to show that Shepard entered the conspiracy. **Second**, even if the evidence was sufficient to show that Shepard entered the conspiracy “elsewhere,” (i.e. in the Eastern District of New York), the evidence was insufficient to show that Shepard was involved in the conspiracy in the Southern District of New York as charged. *See* A-12.

1. The Evidence Was Insufficient to Prove Shepard's Involvement in the Charged Conspiracy Beyond a Reasonable Doubt.

The evidence was insufficient to prove that Shepard was involved in Adams' conspiracy to distribute and possess with the intent to distribute 1,000 or more kilograms of marijuana in the Southern District of New York and elsewhere as charged.

a. The Cooperating Witnesses' Testimony About Deliveries

As set forth above, each of the cooperating witnesses offered a different story about Shepard's alleged level of involvement in the conspiracy, and two of the cooperating witnesses—Montero and Campbell—testified that they had never seen Shepard with *any* marijuana or, in Campbell's case, did not even know firsthand who "Crazy" was. A-877. Montero testified only that Shepard had given Adams money on a single occasion. A-607-10. However, Montero's testimony that he "knew" that the closed bag contained "approximately \$50,000" in cash (A-610, 637) was clearly discredited by Campbell's testimony that it would be "impossible" to know what was in a sealed bag or, even if it could be established that the bag contained money, to know how much money it was. A-919-21.

Furthermore, Montero's testimony about Shepard giving money to Adams came in response to a statement that he had seen Adams give money to Shepard,

which he was then asked to explain. A-608. Therefore, Montero's testimony about this incident and who gave what to whom is highly incredible.

Campbell testified that he had counted money from "Crazy" or "Craze" "a handful of times" and that there were times that Adams had "randomly" written names of individuals on slips of paper and put them in the bags of money. A-906. Combined with all of the witnesses' testimony that Adams was afraid that Shepard would turn him in to the authorities (A-611, 623, 908-09, 914-15, 921), and that Adams told the cooperating witnesses that he had decided to bring Shepard into the conspiracy to dissuade her from taking that action (A-921), Campbell's testimony as to Adams' precautions and planned actions established that it was more than likely that Adams had fabricated the fact of Shepard's participation in the charged conspiracy in the same manner that he had fabricated the story that Ryan had "killed two people." A-404-05, 418-19, 498, 574-78, 708, 924-26.

Additionally, the two cooperating witnesses who testified that they had seen Shepard with marijuana were highly incredible. Ryan, a twice-convicted drug trafficker facing a minimum 20-year sentence, testified that he had dropped off boxes of marijuana to Shepard Ryan delivered 20 to 40 pounds of marijuana to Shepard at a time, "[a]t least once a week, when I was in town," or maybe it had been "40 [pounds] twice a week" the "couple times" that he was in town. A-336, 446. From this alleged action, Ryan "knew" that Shepard was dealing 100 pounds

of marijuana a week. A-446. However, Ryan's "knowledge" as to the quantities of marijuana with which the coconspirators were involved, especially when contrasted with their own testimony, was shown to be extremely unreliable.

For example, Ryan testified that Montero sold 40 to 60 pounds *per week*. A-445. Montero testified, however, that he received five pounds from Adams at a time at first and that later, at the height of his involvement, he was selling 40 to 50 pounds *per month*. A-558, 625, 646.

Ryan testified that Evins "would do a hundred [pounds per week] on occasions." A-445. Evins, however, stated that he "never" sold 100 pounds per week, and that if Ryan had stated that he did, "That was untruthful." A-831. Evins testified that it would have been "impossible" for him to have sold that quantity and that anyone who said that he had would have been lying. A-841-42.

As to his own involvement, Ryan testified that, on one occasion, he received one or two pounds of marijuana. A-509-10. Montero testified, however, that it could have been 1 to 200 hundred pounds because "I've seen that before where [Adams] would write a 1 pack, but it is really 100 pounds for someone." A-577-78.

Finally, Evins testified that he met Shepard once, at night, when she got into the back of a van with tinted windows, but that he would "absolutely" recognize her again. A-722, 786. Evins was high on marijuana at the time. A-787. Evins

related that, on that occasion (and only on that occasion), Shepard had received five pounds of marijuana from Adams. A-759-60, 793. As a longstanding member of the conspiracy, Evins could only relate this single occasion on which Shepard had received marijuana. A-722. Again, casting further doubt on Ryan's credibility, Ryan testified that Evins delivered to Shepard once, but Evins made no mention of such a delivery. A-336. Moreover, contrasted with Ryan's testimony that Shepard was dealing 100 pounds per week, Evins' testimony about a five pound delivery in the fall of 2009 after Ryan testified that she had been "cut off" in the summer of 2009, is completely illogical. A-335, 783, 786, 821.

Given the substantial discrepancies in the cooperating witnesses' testimony, the evidence was insufficient to prove Shepard's involvement in the conspiracy to distribute and possess with the intent to distribute 1,000 or more kilograms of marijuana beyond a reasonable doubt. *Garcia*, 112 F.3d at 506. Moreover, even if Shepard was aware of the existence of the conspiracy, "mere awareness does not satisfy the conspiracy requirement that two parties act in concert toward a common goal." *Geibel*, 369 F.3d at 692. Indeed, "too little knowledge may undermine a conspiracy conviction." *Zichettello*, 208 F.3d at 100.

b. The Insufficient Evidence About the "Crazy" Phone

As Agent Quinn testified, the cellular telephone associated with the 0325 number (the "Crazy" phone) was never recovered. A-239. Moreover, beyond the

fact that the phone was registered in April 2009 to Shepard by her niece, Gabrielle Shepard (A-990, 1083), no evidence placed that telephone in Shepard's hands in October 2009 when the text messages concerning marijuana were exchanged.

Although Amory Minot testified that the phone used cellular towers in Williamsburg, Brooklyn (A-1126), the evidence also showed that nearly all of the coconspirators lived in Williamsburg, and no evidence established that one of them had not been the person using the phone.

Further, Shepard's own phone records corroborated Gabrielle Shepard's explanation of why the phone had been registered to Shepard on April 13, 2009. Gabrielle testified that Shepard had lost her phone and that, therefore, she had borrowed one that had had to be registered. A-989-90. Shepard's phone records demonstrated that, from April 12 through April 17, no calls had been made from her own phone and that, on April 17, the first calls made had been to customer service and then to voicemail. A-1086-88. Combined with Campbell's and Ryan's testimony that Adams controlled the phones and that he frequently gave away phones that he was no longer using (A-887, 463-64), the evidence that Shepard lost her own phone and borrowed one from Adams in the interim provides a compelling explanation for why she registered the 0325 phone on April 13, 2009.

“[D]rawing all inferences in the government’s favor and deferring to the jury’s assessments of the credibility of the witnesses” the evidence was insufficient to prove Shepard’s guilt beyond a reasonable doubt. *Garcia*, 112 F.3d at 506.

c. The Failure to Seek a Search Warrant

Agent Quinn testified that he did not seek a search warrant for Shepard’s home because he did not believe that there was probable cause to believe that evidence of Shepard’s participation in the conspiracy would be found in May 2010. A-265, 273, 279-80. However, when Agent Quinn arrested Montero in May 2010, he searched his home and recovered drugs and money. A-180-81. When Agent Quinn arrested Ryan in April 2010, he recovered drug paraphernalia. A-185. When Agent Quinn arrested Campbell in November 2010, nearly a full year after Adams’ arrest, he recovered money traceable to the conspiracy. A-190. Taken together, these facts indicate that, had Shepard truly been involved in the conspiracy, Agent Quinn would have sought a search warrant for her home in May 2010. Tellingly, he did not, and no evidence was ever seized from Shepard’s person or her home.

2. The Evidence Was Insufficient to Prove Shepard’s Participation in the Charged Conspiracy in the Southern District of New York.

Even assuming, *arguendo*, that the Court finds that the evidence was sufficient to prove that Shepard was involved in the conspiracy to some extent, the

evidence was insufficient to demonstrate (as argued in Argument Section I, *supra*) that Shepard was involved in the conspiracy in the Southern District of New York as charged.

Shepard was charged with participating in the conspiracy in the Southern District of New York, not with the existence of the conspiracy. However, the evidence at trial proved that the conspiracy had been based in Brooklyn, New York, in the Eastern District. Activities outside the Eastern District of New York during the period of the conspiracy included only (1) the pick-ups in New Jersey, Connecticut, and upstate New York (as to which no evidence was offered concerning the paths taken by the vehicles on those occasions) (A-561-62, 867-68); (2) Campbell's testimony that he had made one delivery in the summer of 2008 to Manhattan (at a time well before the earliest date Shepard was alleged to have entered the conspiracy) (A-864-65); and (3) the fact of the December 2, 2009 arrest of Adams, Evins, McCabe, and Gary in the Southern District of New York (A-105-06, 113, 766, 774).

Thus, no evidence showed that, during the time in which Shepard was a member of the conspiracy, the coconspirators had taken any purposeful action within the Southern District of New York in furtherance of the conspiracy or committed any overt act therein. To the contrary, Evins testified that the coconspirators had not intended to go to Manhattan and that they had done so only

to evade surveillance. A-811-12. Moreover, the text messages sent from the 0325 phone number to Adams on December 2, 2009, indicate that, if Shepard was indeed the individual using the 0325 phone, she had no idea that the coconspirators were going to (or were in) Manhattan and that their presence in the Southern District of New York was not reasonably foreseeable to her. A-175-78. Shepard's lack of knowledge "may undermine [her] conspiracy conviction." *Zichettello*, 208 F.3d at 100.

Finally, Shepard should not be held responsible for Campbell's 2008 delivery to Manhattan because the evidence showed that Campbell had never met Shepard and that he didn't have any firsthand knowledge of who she was or even of her existence at that time. A-877. Conversely, none of Campbell's actions would have been reasonably foreseeable to Shepard either in 2008 or at any other point in the conspiracy. Although Shepard may have been aware of the existence of the conspiracy, "when a defendant is charged with a single conspiracy among multiple members, and the proof at trial shows that he conspired with some, but not all, of those members, . . . the essential question is whether the jury convicted the defendant on evidence unrelated to his own alleged activity." *Geibel*, 369 F.3d at 692-93 (internal citations omitted). Because there was no evidence that Shepard conspired with Campbell, she could not be convicted based on the evidence of his actions.

* * *

Therefore, for the reasons set forth above, the evidence was insufficient to prove Shepard's involvement in the charged conspiracy within the Southern District of New York and elsewhere beyond a reasonable doubt.

CONCLUSION

Wherefore Stephanie Shepard respectfully submits that her conviction should be vacated because (1) there was no venue in the Southern District of New York and (2) the evidence was insufficient to prove her involvement in the charged conspiracy beyond a reasonable doubt.

Dated: February 28, 2012
New York, NY

Respectfully submitted,

s/John Meringolo
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 13,828 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2008 in 14 point Times New Roman font.

s/John Meringolo
John Meringolo

Attorney for Defendant-Appellant

SPECIAL APPENDIX

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Amended Judgment, dated October 25, 2011	SPA-7

SPA-1

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AO 245B (Rev. 09/11) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA
v.
STEPHANIE SHEPARD

JUDGMENT IN A CRIMINAL CASE

Case Number: S2 10 CR 0653 (GBD)

USM Number: 63549-054

John Meringolo/ AUSA Janis Echenberg

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s)
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) 1 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Row 1: 21 USC (b)(1)(A) & 846, Conspiracy to Distribute Marijuana, 12/2/2009, 1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) 2, 3
Count(s) in underlying indictments is are dismissed on the motion of the United States.

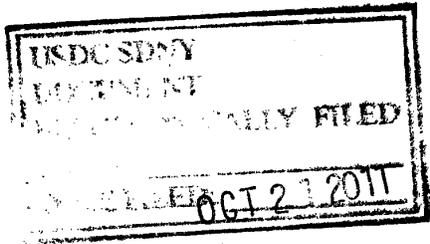
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/20/2011
Date of Imposition of Judgment

George B. Daniels
Signature of Judge

George B. Daniels U.S. Dist. Cr. Judge
Name of Judge Title of Judge

10/21/2011
Date



SPA-2

Case 1:10-cr-00653-GBD Document 51 Filed 10/21/11 Page 2 of 6

AO 245B (Rev. 09/11) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 6

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
10 years.

The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant serve her sentence in a facility as close to her California residence as possible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case 1:10-cr-00653-GBD Document 51 Filed 10/21/11 Page 3 of 6

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3 — Supervised Release

Judgment—Page 3 of 6

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
5 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case 1:10-cr-00653-GBD Document 51 Filed 10/21/11 Page 4 of 6

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 3A — Supervised Release

Judgment—Page 4 of 6

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant will participate in a program approved by the United States Probation Office, which program may include testing to determine whether the defendant has reverted to using drugs or alcohol. The Court authorizes the release of available drug treatment evaluations and reports to the substance abuse treatment provider, as approved by the Probation Officer. The defendant will be required to contribute to the costs of services rendered (co-payment), in an amount determined by the probation officer, based on ability to pay or availability of the third-party payment.

The defendant shall submit her person, residence, place of business, vehicle, or any other premises under her control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

The defendant is to report to the nearest Probation Office within 72 hours of release from custody.

The defendant shall be supervised by the district of residence.

SPA-5

Case 1:10-cr-00653-GBD Document 51 Filed 10/21/11 Page 5 of 6
AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

Judgment — Page 5 of 6

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution.
 - the interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SPA-6

AO 245B (Rev. 09/11) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Immediate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
\$70,000 pursuant to the forfeiture order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

SPA-7

UNITED STATES DISTRICT COURT

Southern

District of

New York

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

V.

STEPHANIE SHEPARD

Case Number: S2 10 CR 0653 (GBD)

USM Number: 63549-054

John Meringolo/AUSA Janis Echenberg

Date of Original Judgment: 10/21/2011
(Or Date of Last Amended Judgment)

Defendant's Attorney

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) 1 after a plea of not guilty.

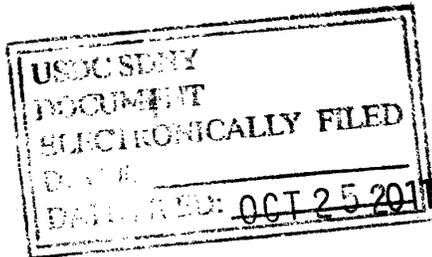
The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC (b)(1)(A) & 846	Conspiracy to Distribute Marijuana	12/2/2009	1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) in underlying indictments is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.



10/20/2011
Date of Imposition of Judgment

George B. Daniels
Signature of Judge

George B. Daniels U.S. Dist. Cr. Judge
Name of Judge Title of Judge

10/25/2011
Date

SPA-8

(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

Judgment — Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 10 years.

The court makes the following recommendations to the Bureau of Prisons:

The court recommends that the defendant serve her sentence in a facility as close to her California residence as possible.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 - at _____ a.m. p.m. on _____
 - as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on _____
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

AO 245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 3A — Supervised Release

Case 1:10-cr-00653-GBD Document 54 Filed 10/25/11 Page 4 of 6

(NOTE: Identify Changes with Asterisks (*))

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

Judgment—Page 4 of 6

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant will participate in a program approved by the United States Probation Office, which program may include testing to determine whether the defendant has reverted to using drugs or alcohol. The Court authorizes the release of available drug treatment evaluations and reports to the substance abuse treatment provider, as approved by the Probation Officer. The defendant will be required to contribute to the costs of services rendered (co-payment), in an amount determined by the probation officer, based on ability to pay or availability of the third-party payment.

The defendant shall submit her person, residence, place of business, vehicle, or any other premises under her control to a search on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

The defendant is to report to the nearest Probation Office within 72 hours of release from custody.

The defendant shall be supervised by the district of residence.

SPA-12

Case 1:10-cr-00653-GBD Document 54 Filed 10/25/11 Page 6 of 6

AO 245C (Rev. 09/11) Amended Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

(NOTE: Identify Changes with Asterisks (**))

Judgment — Page 6 of 6

DEFENDANT: STEPHANIE SHEPARD
CASE NUMBER: S2 10 CR 0653 (GBD)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

\$70,000 pursuant to the forfeiture order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

