

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2007

4 (Argued: June 2, 2008

Decided: September 2, 2008)

5 Docket No. 06-0833-cr

6 -----
7 UNITED STATES OF AMERICA,

8 Appellee,

9 - v -

10 MANUEL SANTOS,

11 Defendant-Appellant.
12 -----

13 Before: McLAUGHLIN, SACK, and LIVINGSTON, Circuit Judges.

14 Appeal by the defendant Manuel Santos from a judgment
15 of conviction in the United States District Court for the Eastern
16 District of New York (David G. Trager, Judge) for murder while
17 engaging in a drug offense punishable under 21 U.S.C.

18 § 841(b)(1)(A), in violation of 21 U.S.C. § 848(e)(1)(A). On
19 appeal, the defendant raises questions of statutory
20 interpretation with respect to section 848(e)(1)(A) and argues
21 that the evidence presented was insufficient for conviction.

22 Affirmed.

23 CARRIE CAPWELL, Assistant United States
24 Attorney (Benton J. Campbell, United
25 States Attorney for the Eastern District
26 of New York, Jo Ann M. Navickas,
27 Assistant United States Attorney, of
28 counsel), Brooklyn, NY, for Appellee.

1 PHILIP R. SCHATZ, Wrobel & Schatz LLP,
2 New York, NY, for Appellant.

3 SACK, Circuit Judge:

4 Defendant Manuel Santos was convicted, following a jury
5 trial in the United States District Court for the Eastern
6 District of New York (David G. Trager, Judge), of the murders of
7 Wilber Garces and Edgardo Bryan while engaging in a drug offense
8 punishable under 21 U.S.C. § 841(b)(1)(A), in violation of 21
9 U.S.C. § 848(e)(1)(A), and for possession and discharge of a
10 firearm in furtherance of a crime of violence, in violation of 18
11 U.S.C. § 924(c)(1)(A)(iii). He was sentenced principally to two
12 concurrent terms of life imprisonment and a consecutive term of
13 imprisonment of ten years.

14 On appeal, Santos raises questions of statutory
15 interpretation, and a related challenge to the sufficiency of the
16 evidence pertaining to his drug-related murder conviction under
17 section 848(e)(1)(A). We are asked to determine: (1) whether
18 section 848(e)(1)(A) requires the government to prove that the
19 defendant was, at the time of the murder, "actively engaged in
20 drug dealing," Appellant's Br. 39; (2) what type of nexus the
21 statute requires between a murder and a drug offense; and, in
22 light of our answers to those questions, (3) whether the evidence
23 adduced at Santos's trial was sufficient to support his
24 conviction.

25 We conclude that (1) because some drug conspiracies in
26 violation of 21 U.S.C. § 846 are "punishable under" section

1 841(b)(1)(A), criminal liability under section 848(e)(1)(A)
2 requires no active involvement in drug distribution; (2) the
3 nexus between a murder and a drug offense need not be more than
4 the "substantive connection" described in United States v.
5 Desinor, 525 F.3d 193, 202 (2d Cir. 2008); and (3) the evidence
6 adduced at trial that Santos killed Garces and Bryan while
7 engaging in a drug offense punishable under 21 U.S.C.
8 § 841(b)(1)(A) was sufficient for a jury to convict him under 21
9 U.S.C. § 848(e)(1)(A). We therefore affirm.

10 **BACKGROUND**

11 In setting forth the factual background of this appeal,
12 we view the evidence in the light most favorable to the
13 government, and insofar as we draw inferences, we draw them in
14 the government's favor. See United States v. Morgan, 385 F.3d
15 196, 198 (2d Cir. 2004).

16 Santos's involvement in the murders of thirty-year-old
17 Wilber Garces and fourteen-year-old Edgardo Bryan arose from his
18 acquaintance with Carlos Medina. Medina was a cooperating
19 witness whose testimony was central to the government's case at
20 trial. Medina worked for German Dario Polanco, a Colombian drug
21 boss who sold large quantities of cocaine and marijuana. As
22 Polanco's "enforcer," Medina collected drug debts and committed
23 acts of violence on Polanco's behalf.

24 In September 2000, Polanco instructed Medina to hire
25 some men to kill "Ronnie" and "El Rancho," two men Polanco blamed
26 for stealing \$316,000 in cocaine proceeds from him in 1998.

1 Medina, in turn, hired Alex Core to commit the murders, and Core
2 subsequently enlisted Santos in the effort.

3 Medina and Santos first met on the morning of the
4 murders, September 26, 2000. According to the testimony of
5 Medina -- the cooperating witness -- Santos "wanted to know
6 everything." Trial Tr. 322, United States v. Santos, No. 01-cr-
7 537 (E.D.N.Y. Nov. 9, 2004). Santos first asked about the "job."
8 Id. at 321. Medina explained that Polanco, whom Medina referred
9 to as his "uncle," was a "traquetero" -- which he said was a
10 "Caribbean" word for a well-connected, heavy-selling drug dealer
11 -- who wanted two men killed for robbing him of \$316,000.¹ Id.
12 at 321-22. Santos then asked Medina the price at which he and
13 his "uncle" sold "the kilos" of cocaine, and how much he would be
14 paid for the killings. Id. at 322. Medina told Santos that he
15 and Core had agreed to "\$7,500 per head." Id. The trio drove to
16 a parking lot on 102nd Street in Queens so that Medina and Core
17 could point out Ronnie's house to Santos. Santos said, "These
18 motherfuckers are dead with me today." Id. at 339.

19 That evening, Santos, Medina, and Core returned to the
20 parking lot across from Ronnie's house and waited. Two people
21 exited the house, got into a car in the same parking lot where
22 the trio was waiting, and began to back the car out. Santos

¹ A DEA expert witness on wholesale cocaine prices testified that \$316,000 would buy ten to eighteen kilograms of cocaine in early 1998, the year of the alleged robbery, and eleven to fifteen kilograms in September 2000, when the killings occurred.

1 maneuvered his vehicle to block its exit. He and Core jumped out
2 and opened fire. Garces and Bryan were killed.

3 The killings were a mistake. Neither Garces nor Bryan
4 had been Polanco's intended target.

5 Santos was indicted for the murders. The indictment
6 charged that Santos,

7 while engaging in an offense punishable under
8 Section 841(b)(1)(A) of Title 21 of the
9 United States Code, to wit: conspiring to
10 distribute five kilograms or more of a
11 substance containing cocaine, a Schedule II
12 controlled substance, in violation of Section
13 846 of Title 21, United States Code, did
14 knowingly and intentionally kill, counsel,
15 command, induce, procure and cause the
16 intentional killings of Wilber Garces [and
17 Edgardo Bryan], and such killing[s] did
18 result.

19 Indictment 1-2, United States v. Santos, No. 01-cr-537 (E.D.N.Y.
20 May 18, 2001) (charging violations of 21 U.S.C. § 848(e)(1)(A)).²

21 At Santos's trial, the district court instructed the
22 jury on three elements the government was required to prove
23 beyond a reasonable doubt to convict Santos: (1) that he engaged
24 in a conspiracy to distribute five or more kilograms of cocaine;
25 (2) while engaging in the conspiracy, he knowingly and
26 intentionally killed Garces (Count 1) or Bryan (Count 2) or both;
27 and (3) the killings actually resulted from his actions. The
28 court also instructed the jury on the elements of conspiracy,
29 noting that "[t]here are various roles members can play in a drug

² Santos was also charged with a firearms offense related to the killings, see 18 U.S.C. § 924(c)(1)(A)(iii), but that count is a tangential issue on this appeal.

1 conspiracy," including "collecting money owed" and "enforcing
2 drug debts." Trial Tr. 904, United States v. Santos, No. 01-cr-
3 537 (E.D.N.Y. Nov. 19, 2004). And the court instructed the jury
4 that, for a conviction, "the defendant's participation in the
5 killing must be related to the drug conspiracy" and that this
6 condition would be satisfied if there was a "meaningful
7 connection between the defendant's role in the killing and his
8 participation in the drug conspiracy." Id. at 908.

9 Santos was convicted. He appeals.

10 DISCUSSION

11 I. Statutory Interpretation

12 Santos was convicted of violating 21 U.S.C.
13 § 848(e)(1)(A), which requires a term of imprisonment of 20 years
14 to life, and permits the death penalty, for

15 any person engaging in or working in
16 furtherance of a continuing criminal
17 enterprise, or any person engaging in an
18 offense punishable under section
19 841(b)(1)(A) of this title or section
20 960(b)(1) of this title who
21 intentionally kills or counsels,
22 commands, induces, procures, or causes
23 the intentional killing of an individual
24 and such killing results

25 21 U.S.C. § 848(e)(1)(A) (emphasis added). The subject of this
26 appeal is Santos's conviction under the statute's second prong,
27 the drug-related murder provision.

28 Santos's challenge to his conviction implicates two
29 questions of statutory interpretation, which, as questions of
30 law, we review de novo. See United States v. Gayle, 342 F.3d 89,

1 91 (2d Cir. 2003), cert. denied, 544 U.S. 1026 (2005). First,
2 what is the scope of the statutory requirement that the defendant
3 was "engaging in an offense punishable under" 21 U.S.C.
4 § 841(b)(1)(A)? Second, what sort of nexus or connection between
5 the charged drug offense and the charged killing is required for
6 conviction?

7 A. "Engaging in an Offense Punishable
8 Under Section 841(b)(1)(A)"

9 Santos argues that, as a matter of law, the government
10 was required to prove that he was "actively engaged in the
11 distribution of drugs." Appellant's Br. 42. We disagree.

12 "Statutory interpretation always begins with the plain
13 language of the statute, assuming the statute is unambiguous."
14 Universal Church v. Geltzer, 463 F.3d 218, 223 (2d Cir. 2006),
15 cert. denied, 127 S. Ct. 961 (2007). When a court determines
16 that the language of a statute is unambiguous, its inquiry is
17 complete. See, e.g., Marvel Characters, Inc. v. Simon, 310 F.3d
18 280, 290 (2d Cir. 2002). Thus, although Santos argues that his
19 position is supported by the legislative history of section
20 848(e)(1)(A) and principles of statutory construction favoring a
21 narrow interpretation of criminal statutes, we need not resort to
22 these modes of interpretation if the plain language of the
23 statute is clear. See, e.g., Conn. Nat'l Bank v. Germain, 503
24 U.S. 249, 253-54 (1992); Davis v. Mich. Dep't of Treasury, 489
25 U.S. 803, 808 n.3 (1989); Cohen v. JP Morgan Chase & Co., 498

1 F.3d 111, 116 (2d Cir. 2007); Gottlieb v. Carnival Corp., 436
2 F.3d 335, 337-38 (2d Cir. 2006).

3 Section 848(e)(1)(A), as relevant to this appeal,
4 applies to "any person engaging in an offense punishable under
5 [21 U.S.C. §] 841(b)(1)(A) . . . who intentionally kills or
6 counsels, commands, induces, procures, or causes the intentional
7 killing of an individual and such killing results." 21 U.S.C.
8 § 848(e)(1)(A) (emphasis added). Section 841(b)(1)(A), referred
9 to in section 848(e)(1)(A), does not itself proscribe specific
10 conduct; it establishes penalties, including imprisonment for ten
11 years to life, for drug offenses involving specific types and
12 quantities of controlled substances.³

13 The penalties set forth in section 841(b) apply not
14 only to those who "knowingly or intentionally . . . manufacture,
15 distribute, or dispense, or possess with intent to manufacture,
16 distribute, or dispense, a controlled substance," id.
17 § 841(a)(1), but also to those who "attempt[] or conspire[]" to
18 do so, id. § 846. See United States v. Richards, 302 F.3d 58, 70
19 n.8 (2d Cir. 2002). That is, "[a]ny person who attempts or
20 conspires to commit any offense defined in [21 U.S.C. §§ 801-904]
21 [is] subject to the same penalties as those prescribed for the
22 offense, the commission of which was the object of the attempt or
23 conspiracy." 21 U.S.C. § 846. Therefore, conspiracy to commit a

³ As relevant to this appeal, 21 U.S.C.
§ 841(b)(1)(A)(ii)(II) provides a mandatory minimum term of
imprisonment for drug offenses involving five kilograms or more
of cocaine.

1 substantive offense punishable under section 841(b)(1)(A) is
2 itself "an offense punishable under section 841(b)(1)(A)," id.
3 § 848(e)(1)(A).⁴

4 Consequently, and contrary to Santos's argument, a
5 defendant need not be "actively engaged in the distribution of
6 drugs," Appellant's Br. 42, in order to be convicted under the
7 drug-related murder prong of section 848(e)(1)(A). The defendant
8 need only be engaging in an offense punishable under section
9 841(b)(1)(A), which includes conspiracy to commit such an
10 offense.

11 Santos also argues that the drug-related murder prong
12 of section 848(e)(1)(A) does not apply to persons who are doing
13 no more than "working in furtherance of" a drug offense,
14 Appellant's Br. 31; that such a drug offense must be committed
15 "independent of the killing itself," id. at 36; and that it must
16 be "ongoing" when the killing occurs, id. at 35. We may assume

⁴ Although we have never squarely addressed the question of whether offenses "punishable under" section 841(b)(1)(A) include conspiracies, we have affirmed several convictions under the drug-related murder prong of section 848(e)(1)(A) in which the defendants were charged with engaging in a drug conspiracy, not actively engaging in the distribution of drugs. See United States v. Desinor, 525 F.3d 193, 197 (2d Cir. 2008); United States v. Frias, 521 F.3d 229, 235 (2d Cir. 2008); United States v. Walker, 142 F.3d 103, 113 (2d Cir.), cert. denied, 525 U.S. 896 (1998). Santos has brought to our attention an unpublished decision of the Sixth Circuit stating that the district court "may have been mistaken" in charging the jury that the defendants could be convicted if they "engaged in (or worked in furtherance of) a drug conspiracy," as opposed to engaging in a substantive drug offense. United States v. Robinson, Nos. 94-1538, 94-1727, 1996 WL 506498, at *13, 1996 U.S. App. LEXIS 25346, at *40 (6th Cir. Sept. 5, 1996) (unpublished), cert. denied, 520 U.S. 1181 (1997). We find this brief, unpublished dictum unpersuasive.

1 that these interpretations of the statute are correct. They do
2 not help Santos, however, because the drug conspiracy statute, 21
3 U.S.C. § 846, does not require proof of an overt act in
4 furtherance of the conspiracy. United States v. Shabani, 513
5 U.S. 10, 11 (1994). Thus, the conspiracy itself -- and no act in
6 furtherance of it, homicidal or otherwise -- serves as the
7 predicate drug offense under section 848(e)(1)(A). So long as
8 the defendant enters into the unlawful agreement before the
9 killing, and the conspiracy is ongoing when the killing occurs,
10 the drug-offense and killing elements of section 848(e)(1)(A) are
11 satisfied by independent acts that overlap in time.

12 Santos, noting that he was not involved in the charged
13 drug conspiracy before the day of the murders, complains that his
14 conviction rests on an interpretation of section 848(e)(1)(A)
15 that would allow the drug-offense and killing elements to be
16 "satisfied by one and the same act." Appellant's Br. 33. We
17 disagree. The "while engaging in" language does imply two
18 separate elements: one drug offense and one killing. An unlawful
19 act committed in furtherance of a drug conspiracy, however, is
20 not itself the drug conspiracy or any element thereof. But such
21 acts -- including killings -- may and often do serve as powerful
22 circumstantial evidence that the charged conspiracy existed and
23 that the actor joined it. See United States v. Quinones, 511
24 F.3d 289, 308 (2d Cir. 2007); United States v. Aleskerova, 300
25 F.3d 286, 292-93 (2d Cir. 2002); see also United States v. Hunte,
26 196 F.3d 687, 691 (7th Cir. 1999); United States v. Johnston, 146

1 F.3d 785, 789 (10th Cir. 1998), cert. denied, 525 U.S. 1088
2 (1999). Thus, although a murder committed by the defendant in
3 furtherance of a drug conspiracy cannot itself satisfy the drug-
4 offense element of section 848(e)(1)(A), it can, in appropriate
5 circumstances, persuade the jury that the defendant was a member
6 of the drug conspiracy in furtherance of which the killing was
7 committed. This would be consistent with the commands of the
8 statute.

9 B. Nexus Between Drug Offense and Killing

10 Next, Santos argues that section 848(e)(1)(A) requires
11 a "direct and substantial nexus" between the killing and the drug
12 offense. Appellant's Br. 42. Santos does little to explain what
13 a "direct and substantial nexus" means, although he suggests that
14 the killing must be "directly related . . . , either proximately
15 or temporally," to the charged drug offense, id. at 43, and that
16 a defendant cannot be convicted if the connection is "too limited
17 and attenuated," id. at 44. These proposed standards are too
18 vague to give courts and juries sufficiently concrete guidance.
19 We therefore decline to adopt them.

20 In United States v. Desinor, 525 F.3d 193 (2d Cir.
21 2008), we concluded that section 848(e)(1)(A) does require a
22 meaningful connection between the killing and the drug offense.
23 See id. at 202. We explained the requirement as follows:

24 To convict a defendant of engaging in a
25 narcotics conspiracy resulting in
26 murder . . . under 21 U.S.C. § 848(e)(1)(A),
27 the government need only prove beyond a
28 reasonable doubt that one motive for the

1 killing . . . was related to the drug
2 conspiracy. The existence of other motives
3 does not affect the government's ability to
4 satisfy the "engaging in" element, as long as
5 there is a substantive connection between the
6 defendant's role in the murder . . . and his
7 participation in the drug conspiracy. The
8 government has no burden to establish that a
9 drug-related motive was the sole purpose, the
10 primary purpose, or even that it was equally
11 as important as any non-drug-related purpose,
12 as long as it was one purpose.

13 Id. (citation omitted).⁵

14 By focusing on the defendant's motive or purpose in the
15 killing, the Desinor standard requires a finding of fact familiar
16 to and accessible by juries. We think the rule set forth in
17 Desinor fully satisfies whatever "nexus" requirement might be
18 implied by the language of section 848(e) (1) (A).

19 II. Sufficiency of the Evidence

20 We turn now to Santos's claim that the evidence
21 presented at trial was insufficient to sustain his conviction.
22 "It is well settled that a defendant seeking to overturn a
23 conviction based upon insufficiency of the evidence bears a heavy
24 burden." United States v. Martinez, 54 F.3d 1040, 1042 (2d
25 Cir.), cert. denied, 516 U.S. 1001 (1995) (citation and internal
26 quotation marks omitted). While "a conviction based on
27 speculation and surmise alone cannot stand," United States v.

⁵ In Desinor, we approved jury instructions stating that the government must prove a murder in connection with, and not just contemporaneous to, a serious drug offense: "For example, a defendant engaging in a narcotics conspiracy who kills a spouse in a purely non-drug-related domestic dispute would not satisfy this element" Desinor, 525 F.3d at 201.

1 D'Amato, 39 F.3d 1249, 1256 (2d Cir. 1994), "the jury's verdict
2 may be based entirely on circumstantial evidence," Martinez, 54
3 F.3d at 1043, and may be "inferred" from the evidence, United
4 States v. Ceballos, 340 F.3d 115, 129 (2d Cir. 2003). So long as
5 the inference is reasonable, "it is the task of the jury, not the
6 court, to choose among competing inferences." Martinez, 54 F.3d
7 at 1043 (citing United States v. Stanley, 928 F.2d 575, 577 (2d
8 Cir.), cert. denied, 502 U.S. 845 (1991)). Thus, where "either
9 of the two results, a reasonable doubt or no reasonable doubt, is
10 fairly possible, the court must let the jury decide the matter."
11 United States v. Autuori, 212 F.3d 105, 114 (2d Cir. 2000)
12 (citation, internal quotation marks, and alteration omitted). In
13 sum, a conviction must be affirmed if, "after viewing the
14 evidence in the light most favorable to the prosecution, any
15 rational trier of fact could have found the essential elements of
16 the crime beyond a reasonable doubt." Jackson v. Virginia, 443
17 U.S. 307, 319 (1979) (emphasis in original).

18 Santos's sufficiency-of-the-evidence assertion consists
19 of two arguments, either one of which -- if successful -- would
20 require us to reverse his conviction. He argues that there was
21 insufficient evidence (1) that he conspired to distribute five
22 kilograms or more of cocaine and (2) of a substantial connection
23 between the killings and the drug conspiracy.⁶ As explained
24 below, we reject both arguments and conclude that the evidence

⁶ Santos does not contest the sufficiency of the evidence that he shot and killed Garces and Bryan.

1 was sufficient to sustain Santos's conviction for drug-related
2 murder under 21 U.S.C. § 848(e) (1) (A).

3 A. The Drug Conspiracy

4 1. Generally. When a defendant challenges the
5 sufficiency of the evidence in a conspiracy case, "deference to
6 the jury's findings is especially important . . . because a
7 conspiracy by its very nature is a secretive operation, and it is
8 a rare case where all aspects of a conspiracy can be laid bare in
9 court with the precision of a surgeon's scalpel." United States
10 v. Morgan, 385 F.3d 196, 204 (2d Cir. 2004) (ellipsis in
11 original) (citation and internal quotation marks omitted). The
12 record must nonetheless permit a rational jury to find: (1) the
13 existence of the conspiracy charged, see United States v. Gaskin,
14 364 F.3d 438, 460 (2d Cir. 2004), cert. denied, 544 U.S. 990
15 (2005); (2) that the defendant had knowledge of the conspiracy,
16 see United States v. Atehortva, 17 F.3d 546, 550-51 (2d Cir.
17 1994); and (3) that the defendant intentionally joined the
18 conspiracy, see United States v. Casamento, 887 F.2d 1141, 1167
19 (2d Cir. 1989), cert. denied, 493 U.S. 1081 (1990). Furthermore,
20 in a conspiracy punishable under 21 U.S.C. § 841(b) (1) (A), the
21 government must also prove (4) that it was either known or
22 reasonably foreseeable to the defendant that the conspiracy
23 involved the drug type and quantity charged. United States v.
24 Adams, 448 F.3d 492, 499 (2d Cir. 2006).⁷

⁷ "In contrast to the general conspiracy statute, 18 U.S.C. § 371, which requires the performance of an overt act, no overt

1 2. The Existence of the Conspiracy. Here, setting
2 aside for the moment the extent of Santos's involvement, there
3 was ample evidence that the charged drug conspiracy existed. The
4 gist of a conspiracy is an agreement between two or more
5 participants to achieve a particular illegal end. See United
6 States v. Svoboda, 347 F.3d 471, 476 (2d Cir. 2003), cert.
7 denied, 541 U.S. 1044 (2004); United States v. Stavroulakis, 952
8 F.2d 686, 690 (2d Cir.), cert. denied, 504 U.S. 926 (1992).
9 "Moreover, the conspiratorial agreement itself may be established
10 by proof of a tacit understanding among the participants, rather
11 than by proof of an explicit agreement, and the absence of an
12 actual sale or seizure of narcotics does not render insufficient
13 the proof of a conspiracy to distribute it." United States v.
14 Desimone, 119 F.3d 217, 223 (2d Cir. 1997) (citations omitted),
15 cert. denied, 525 U.S. 874 (1998). Medina testified that he
16 worked for Polanco, importing and distributing hundreds of
17 kilograms of cocaine and collecting drug debts and committing
18 violence on Polanco's behalf. This evidence permitted the jury
19 to infer reasonably that Medina and Polanco conspired to
20 distribute five kilograms or more of cocaine.

21 3. Santos's Participation in the Conspiracy. Once the
22 existence of a conspiracy has been established, the government
23 must prove that the person charged "knew of the existence of the

act need be alleged or proven as a necessary element of a
conspiracy under 21 U.S.C. § 846." United States v. Delvecchio,
816 F.2d 859, 864 (2d Cir. 1987); accord United States v.
Shabani, 513 U.S. 10, 11 (1994).

1 scheme alleged in the indictment and knowingly joined and
2 participated in it." United States v. Rahman, 189 F.3d 88, 123
3 (2d Cir. 1999) (citation and internal quotation marks omitted),
4 cert. denied, 528 U.S. 1094 (2000).

5 We have overturned conspiracy convictions for
6 insufficiency of the evidence where the government presented
7 insufficient evidence from which the jury could reasonably infer
8 that the defendant had knowledge of the conspiracy charged. See
9 United States v. Friedman, 300 F.3d 111, 126 (2d Cir. 2002),
10 cert. denied, 538 U.S. 981 (2003); United States v. Samaria, 239
11 F.3d 228, 236-38 (2d Cir. 2001); Atehortva, 17 F.3d at 551;
12 United States v. Nusraty, 867 F.2d 759, 765 (2d Cir. 1989). In
13 Atehortva, for example, the defendant was hired to commit a
14 kidnaping for ransom, the purpose of which was to enforce a drug
15 debt. Atehortva, 17 F.3d at 548. We concluded that the evidence
16 was insufficient to support a conviction for a narcotics
17 conspiracy because the government failed to prove that the
18 defendant, although he knowingly joined and participated in the
19 kidnaping plot, "knew of the existence of the . . . debt, or that
20 he knew or should have known that the debt resulted from a
21 narcotics transaction." Id. at 551 (footnote omitted).

22 We have similarly overturned conspiracy convictions
23 where, although the defendant had knowledge of the conspiracy,
24 there was insufficient evidence from which the jury could
25 reasonably have inferred that the defendant intended to join it.
26 See United States v. Ceballos, 340 F.3d 115, 127-28 (2d Cir.

1 2003); United States v. Young, 745 F.2d 733, 764 (2d Cir. 1984),
2 cert. denied, 470 U.S. 1084 (1985); United States v. Gaviria, 740
3 F.2d 174, 184 (2d Cir. 1984). In the absence of an explicit
4 agreement to join a conspiracy, we typically look for evidence
5 that the defendant, in addition to knowing the essential nature
6 of the plan, has "associated himself with the venture in some
7 fashion, participated in it as something that he wished to bring
8 about, or sought by his action to make it succeed." United
9 States v. Vargas, 986 F.2d 35, 39 (2d Cir.) (citation, internal
10 quotation marks, and alterations omitted), cert. denied, 510 U.S.
11 827 (1993); see also Desimone, 119 F.3d at 223 ("An individual
12 defendant's membership in a conspiracy may not be established
13 simply by his presence at the scene of a crime, nor by the fact
14 he knows that a crime is being committed. Instead, membership
15 requires proof of purposeful behavior aimed at furthering the
16 goals of the conspiracy.").

17 Here, there is more than sufficient evidence on which
18 a rational jury could have based a finding that Santos knew of
19 the drug conspiracy. On the morning of the murders, Medina
20 explained to Santos that Medina's "uncle" -- Polanco -- was a
21 heavy-selling drug dealer who wanted two men killed for robbing
22 him of \$316,000. Santos, in response, expressed interest in the
23 drug-dealing operation, inquiring as to the price per kilogram of
24 cocaine.

25 There is also ample evidence that Santos engaged in
26 "purposeful behavior," Desimone, 119 F.3d at 223: He agreed to

1 commit the murders and in fact then shot Garces and Bryan to
2 death.

3 We are left with two questions in this regard: (a)
4 whether a rational jury could find that Santos knew these acts of
5 violence were intended to further the ongoing conspiracy to
6 distribute cocaine; and (b) whether a rational jury could find
7 that he joined the conspiracy "as something that he wished to
8 bring about" and with the intent "to make it succeed," Vargas,
9 986 F.2d at 39 (citation, internal quotation marks, and
10 alteration omitted). We think both inferences were permissible.

11 Because narcotics conspiracies are illicit ventures,
12 disputes are frequently settled by force or the threat of force.
13 See, e.g., Atehortva, 17 F.3d at 548 (kidnaping for ransom to
14 enforce drug debt); see also United States v. Sureff, 15 F.3d
15 225, 228-29 (2d Cir. 1994) (noting that "drug trafficking is
16 often attended by violence"); United States v. Crespo, 834 F.2d
17 267, 271 (2d Cir. 1987) ("We often have taken judicial notice
18 that, to substantial dealers in narcotics, firearms are . . .
19 tools of the trade . . ."), cert. denied, 485 U.S. 1007 (1988).
20 Consequently, "[a]dvancing the aim of [a narcotics] conspiracy
21 can involve performing ancillary functions such as . . .
22 enforcing discipline [and] chastising rivals." United States v.
23 Soto-Beniquez, 356 F.3d 1, 18 (1st Cir.), cert. denied, 541 U.S.
24 1074 (2004); see also United States v. Jenkins, 419 F.3d 614, 620
25 (7th Cir.) ("Different people play different roles in a drug
26 conspiracy, be it supplier, lookout, courier, or enforcer."),

1 cert. denied, 546 U.S. 1051 (2005). Violence furthers such a
2 conspiracy when used to collect debts directly, as in Atehortva,
3 or, as in this case, "by sending the message that those suspected
4 of stealing from the conspiracy would be treated harshly," Soto-
5 Beniquez, 356 F.3d at 32. And Medina testified extensively
6 regarding other acts of violence he had carried out in
7 furtherance of this and other drug conspiracies. In light of
8 these facts established at trial, a reasonable jury could
9 permissibly have concluded that Santos knew not only the nature
10 of the drug conspiracy, but knew also that carrying out the
11 murders would advance its goals.

12 In addition to proving that Santos knew his acts would
13 enable Medina to further the goals of the conspiracy, the
14 government was required to prove that Santos had the specific
15 intent to do so. See Samaria, 239 F.3d at 234. Proof of
16 conspiratorial intent, of course, may be established through
17 circumstantial evidence. United States v. Gore, 154 F.3d 34, 40
18 (2d Cir. 1998). And where there is evidence that the defendant
19 had knowledge of the conspiracy and knowingly took actions
20 advancing the conspiracy's aims, we ordinarily will permit the
21 jury "to infer intent and agreement from knowledge," particularly
22 in the context of the defendant's "interested cooperation,
23 stimulation, and instigation," or when the defendant has a "stake
24 in the venture." United States v. Zambrano, 776 F.2d 1091, 1095
25 (2d Cir. 1985) (internal quotation marks omitted) (citing Direct
26 Sales Co. v. United States, 319 U.S. 703, 712-13 (1943)); see

1 also, e.g., United States v. Flaharty, 295 F.3d 182, 201 (2d Cir.
2 2002) (affirming narcotics conspiracy conviction of arms dealer
3 because "the evidence was ample to permit the jury to infer that
4 [the defendant] knew his purchasers were jointly engaged in
5 narcotics trafficking, that he made numerous and repeated sales
6 to the coconspirators, and that he intended his sales to further
7 their business"), cert. denied, 538 U.S. 915 (2003).

8 There was indeed sufficient evidence for a reasonable
9 jury to conclude that Santos had the specific intent to further
10 the goals of the conspiracy. In addition to knowing that Medina
11 and his "uncle" wished to advance the goals of their narcotics
12 conspiracy by killing the men who they said had stolen from them,
13 Santos exhibited a form of "interested cooperation, stimulation,
14 and instigation" that would permit the jury to infer the "intent
15 and agreement necessary to sustain a conspiracy charge,"
16 Zambrano, 776 F.2d at 1095. Santos's affirmative requests to
17 know more about the purpose behind the killings and details of
18 the drug conspiracy, his declaration that "[t]hese motherfuckers
19 are dead with me today," Trial Tr. 339, United States v. Santos,
20 No. 01-cr-537 (E.D.N.Y. Nov. 9, 2004), and his participation in
21 the killings themselves together amount to a set of circumstances
22 from which the jury could conclude that Santos joined the
23 conspiracy charged. And "[a]lthough, as [Santos] argues, a
24 reasonable juror may have reached a contrary conclusion, such
25 matters are appropriately argued to the jury and are not grounds

1 for reversal on appeal." United States v. Snow, 462 F.3d 55, 69
2 (2d Cir. 2006), cert. denied, 127 S. Ct. 1022 (2007).

3 That Santos did not participate in the narcotics
4 conspiracy in some way other than carrying out the murders does
5 not undermine the sufficiency of the evidence that he was a co-
6 conspirator. "The defendant's participation in a single
7 transaction can, on an appropriate record, suffice to sustain a
8 charge of knowing participation in an existing conspiracy."
9 United States v. Miranda-Ortiz, 926 F.2d 172, 176 (2d Cir.),
10 cert. denied, 502 U.S. 928 (1991). "The defendant need not know
11 the identities of all of the other conspirators, nor all of the
12 details of the conspiracy," Gore, 154 F.3d at 40, and "[a]
13 defendant need not have joined a conspiracy at its inception in
14 order to incur liability for the unlawful acts of the conspiracy
15 committed both before and after he or she became a member,"
16 United States v. Rea, 958 F.2d 1206, 1214 (2d Cir. 1992). Santos
17 may not have played a central role in the charged cocaine
18 conspiracy, but he is liable as a co-conspirator if the jury
19 found -- as it apparently did and reasonably could have here --
20 that he "knew of [its] existence . . . and knowingly joined and
21 participated in it." Snow, 462 F.3d at 68 (citations and
22 internal quotation marks omitted); see also Soto-Beníquez, 356
23 F.3d at 23.⁸

⁸ Santos's sufficiency-of-the-evidence claim contains a barely argued contention that the district court should have given the jury a multiple-conspiracy charge because there was evidence of a conspiracy to commit murder in addition to the

1 Finally, the kind of drug involved and its weight were
2 known or reasonably foreseeable to Santos. See Adams, 448 F.3d
3 at 499. Medina told Santos that his "uncle" -- Polanco -- was a
4 well-connected, heavy-selling cocaine dealer and had been robbed
5 of \$316,000 -- an amount that would have represented the proceeds
6 from far more than five kilograms of cocaine. Santos took an
7 active interest in the drug type and quantity, inquiring
8 specifically as to the sale price per kilogram of cocaine. We
9 conclude that the evidence was sufficient for the jury to find
10 the drug-type and quantity elements proved beyond a reasonable
11 doubt.

conspiracy to distribute cocaine. This claim is without merit. "In order to prevail on a contention that the trial court erred in refusing to give requested instructions, an appellant must establish that his own requested charge accurately represented the law in every respect, and that the charge actually given, viewed as a whole, prejudiced him." United States v. Thompson, 76 F.3d 442, 454 (2d Cir. 1996) (citation and internal quotation marks omitted). Here, the defense theory was that the jury must acquit if it found that Santos had joined a conspiracy to murder but not a drug conspiracy. The jury instructions properly emphasized, however, that the "government must prove beyond a reasonable doubt . . . that the conspiracy be to commit an unlawful act concerning narcotics," Trial Tr. 905, United States v. Santos, No. 01-cr-537 (E.D.N.Y. Nov. 18, 2004) (emphasis added), and that "the government must establish that the defendant intentionally killed Wilber Garces and/or Edgardo Bryan while engaging in a conspiracy to distribute . . . five kilograms or more of . . . cocaine," id. at 907-08 (emphasis added). Because there was no evidence of more than one drug conspiracy and the instructions clearly required the jury to find that the defendant had participated in such a conspiracy in order to convict, the jury charge was adequate.

1 B. Connection Between the Killings
2 and the Drug Conspiracy

3 Having determined that there was sufficient evidence
4 for the jury to find that Santos joined the drug conspiracy as
5 charged, we conclude without difficulty that there was sufficient
6 evidence of a connection between the drug conspiracy and the
7 killings. As noted, "the government need only prove beyond a
8 reasonable doubt that one motive for the killing[s] . . . was
9 related to the drug conspiracy." Desinor, 525 F.3d at 202.
10 Again, the evidence reflects that Santos asked Medina why he was
11 being hired, and Medina told him that his "uncle" -- Polanco --
12 was a large-scale cocaine dealer who wanted two men killed for
13 stealing \$316,000. If the jury found that Santos joined the drug
14 conspiracy, then it unquestionably could have found that one
15 motive for the killings was related to that conspiracy.

16 Santos's argument to the contrary rests primarily on
17 what he contends is the absence of persuasive evidence that
18 Polanco was robbed by the men he wanted killed and that his
19 desire to have them killed was related to his drug dealing. The
20 alleged robbery took place more than two years before the
21 killings, and neither Polanco nor Medina was present when the
22 robbery took place. Santos's argument is misplaced, however,
23 because Santos was told that Polanco had ordered the killings in
24 retaliation for a drug-related robbery. Assuming Santos believed
25 what he was told, that was enough for the jury to find that

1 Santos's motive for committing the murders was, at least in part,
2 related to the drug conspiracy.

3 Santos also argues that the killings were unrelated to
4 the drug conspiracy because he agreed to carry them out before he
5 learned about the drug conspiracy. But the record fails to
6 support this assertion. The first time Santos expressed his
7 intent to kill anyone was when, after Medina explained that his
8 drug-dealer "uncle" had been robbed of \$316,000, Santos
9 exclaimed, "These motherfuckers are dead with me today." Trial
10 Tr. 339, United States v. Santos, No. 01-cr-537 (E.D.N.Y. Nov. 9,
11 2004).

12 Last, we reject Santos's argument that his motive was
13 not drug related because Medina told him that his "uncle" had
14 been robbed, thereby suggesting to Santos that the murders were
15 motivated by Medina's desire to exact revenge on behalf of his
16 family rather than in furtherance of the drug conspiracy. This
17 argument is unavailing. As we explained in Desinor, the jury
18 need only find that one motive for the killing was drug related.
19 See Desinor, 525 F.3d at 203 (concluding that "the jury easily
20 could have inferred that . . . whether or not there was also a
21 personal vendetta . . . there was an underlying motive to protect
22 the [defendants'] narcotics business from . . . interference").
23 Here, too, the jury easily could have inferred that an underlying
24 motive for the murders was related to the drug conspiracy.

CONCLUSION

1

2

3

For the foregoing reasons, the judgment of the district court is affirmed.