**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 20-4095**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID HARRIS MILLER,

Defendant - Appellant.

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**No. 20-4121**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID HARRIS MILLER,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:17−cr−00213−TSE−1)

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Argued: May 3, 2022 Decided: July 19, 2022

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Before KING and WYNN, Circuit Judges, and FLOYD, Senior Circuit Judge.

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Affirmed by published opinion. Judge Wynn wrote the opinion, in which Judge King and Senior Judge Floyd joined.

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**ARGUED:** Andrew Summer Levetown, LEVETOWN LAW LLP, Washington, D.C., for Appellant. Samantha Paige Bateman, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Glenn F. Ivey, IVEY & LEVETOWN, Greenbelt, Maryland, for Appellant. G. Zachary Terwilliger, United States Attorney, Raj Parekh, Acting United States Attorney, Uzo E. Asonye, Assistant United States Attorney, Daniel T. Young, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

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WYNN, Circuit Judge:

David Harris Miller appeals from his convictions for conspiracy to commit fraud, conspiracy to launder money, and eight counts of mail or wire fraud. He argues that his trial was constitutionally defective, his indictment was constructively amended, his jury instructions prejudiced him, and his conviction for conspiracy to launder money must be reversed for lack of sufficient evidence. But his arguments—most of which were not properly preserved—are meritless. So, we affirm his convictions.

I.

On September 20, 2017, a grand jury indicted Miller on one count of conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349 ("Count 1"); one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) ("Count 2"); four counts of mail fraud in violation of 18 U.S.C. §§ 1341–1342 ("Counts 3–6"); four counts of wire fraud in violation of 18 U.S.C. §§ 1342–1343 ("Counts 7–10"); and two counts of aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1)–(2) ("Counts 11–12"). The indictment also included a forfeiture notice for Miller's Fairfax, Virginia home and his Bethany Beach, Delaware vacation home.[1] Miller pleaded not guilty, and the case proceeded to trial.

[1] Before Miller was indicted, his wife pleaded guilty to conspiring with him to commit fraud. To satisfy a money judgment against her, the district court ordered the forfeiture of both properties. *United States v. Miller*, 295 F. Supp. 3d 690, 692–93 (E.D. Va. 2018). In response, Miller filed several motions for relief and contested the forfeiture in multiple hearings before the district court. *Id.* at 693–94. Following his indictment, the Government renewed its efforts to seize these properties. *Id.* at 694. After two more

After reviewing the Government's evidence at trial, Miller's evidence in defense, the trial's procedural history, and subsequent events, we conclude that Miller's trial was free from prejudicial error.

A.

In its case-in-chief, the Government called twenty-nine witnesses who testified that from 2011 to 2014, Miller worked as the General Counsel and Chief Compliance Officer at SkyLink Air and Logistic Support ("SkyLink"), a Canadian-based company with an office in Dulles, Virginia. During this period, Miller and his wife, Lynn Miller ("Lynn"), created two fake law firms, Federal Legal Associates and the Straile Group.

As a SkyLink employee, Miller began "exchanging" emails with fictitious individuals purportedly "employed" by these bogus firms. Many of the emails he supposedly received from these fake firms were later traced to the IP address for his Fairfax home. On several occasions, however, Miller sent messages from his *own* email addresses that were purportedly from employees at Federal Legal Associates or the Straile Group.

Emails from these fake firms often contained invoices for legal work allegedly performed for SkyLink. Templates for these invoices—complete with fake letterhead—were later discovered on Miller's SkyLink computer. Many of the submitted invoices

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hearings, *id.*, the district court ultimately found there was probable cause to believe that both properties were "involved in" the charged money-laundering conspiracy and partially "traceable to" said conspiracy and the underlying fraud charged in the indictment, *id.* at 698. We affirmed. *United States v. Miller*, 911 F.3d 229, 230 (4th Cir. 2018).

referenced matters that had already been resolved. And there was no evidence that any SkyLink employee other than Miller ever saw any work product regarding these matters.

According to an expert witness, payments from SkyLink to these fake firms were wired to or deposited in bank accounts created by Lynn that ostensibly belonged to Federal Legal Associates and the Straile Group, as well as another bank account Lynn illicitly opened in the name of Miller's (legitimate) former employer, Federal Legislative Associates. On several occasions, Miller facilitated these transactions by hand delivering SkyLink checks to his wife so that she could deposit them. SkyLink ultimately paid out $368,350 to these fake entities before it discovered the expenditures and fired Miller on May 6, 2014.

Meanwhile, shortly before he became SkyLink's General Counsel, Miller—who has two children with autism—co-founded the Community College Consortium on Autism and Intellectual Disabilities ("the Consortium"). Miller and others purportedly formed this organization to help community colleges develop and fund programs for individuals with intellectual disabilities. For several years, Miller worked to solicit funding from colleges, Congress, and private individuals. All told, the Consortium raised over $783,000.

According to witnesses, Lynn was also intimately involved in the Consortium's work, and, as time went on, began taking on more of the day-to-day responsibilities for managing the organization. Eventually, Miller floated the idea of hiring Lynn as the Consortium's executive director on an unpaid basis. Though the other co-founders initially rejected the idea, Miller persisted until Lynn was hired. Once Lynn obtained control of the Consortium's bank account, she immediately began spending its funds on the Millers'

personal expenses. In total, over a period of about four years, nearly 80% of the Consortium's assets—$619,025—were spent directly on personal expenses for the Millers or transferred to bank accounts they controlled—including the Federal Legal Associates and Straile Group accounts and the faux Federal Legislative Associates account.

Around the same time, Miller began "working on getting" Lynn selected as the treasurer for Virginia State Senator Richard Saslaw's reelection campaign (the "Saslaw Campaign"). J.A. 630.[2] Once she was selected for that position on a volunteer basis, Lynn got access to the campaign checkbook. Lynn used this checkbook to pay out over $633,000—about half of what Senator Saslaw raised during the 2013–14 campaign cycle—into the same three bank accounts mentioned above.[3] When Senator Saslaw discovered these discrepancies, he terminated Lynn on September 5, 2014.

Government witnesses also testified at length about how the money siphoned from SkyLink, the Consortium, and the Saslaw Campaign was transferred and spent. An expert witness testified that once funds were deposited into bank accounts the Millers controlled, this money was generally shuffled between accounts, often by shifting it from the purported business accounts into the Millers' joint personal bank account. According to witnesses, there was "no reason" for shifting money between these accounts other than to hide that the Millers were paying bills with fraudulent proceeds. J.A. 982; *see* J.A. 1006–07, 1314–17.

[2] Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

[3] Lynn wrote out two other checks totaling $20,000 directly to herself.

The funds were then used for various personal expenditures. Some of these expenditures were for Miller's benefit alone, such as his country-club dues, child-support payments for a child from a previous relationship, and checks to his attorney. Other payments benefitted the Millers jointly, including mortgage payments for their Virginia home, private-jet rentals, and luxury vacations.

Due in part to this heavy spending, when SkyLink fired Miller, the balance in the Millers' joint bank account was $462.56 in the red. Neither Miller nor his wife held a paying job. Yet over the next four months, that joint account—kept afloat largely by transfers from the faux Federal Legislative Associates account—paid out over $165,000 to cover various personal expenses. Tens of thousands more, including a $25,000 mortgage payment, were paid out directly from the Federal Legislative Associates account during the same period.

B.

After the Government rested, Miller testified as the only witness in his defense.

On direct, Miller acknowledged creating Federal Legal Associates and the Straile Group while working for SkyLink. He stated that he created these entities for the betterment of SkyLink; specifically, he said that he wanted to help SkyLink research certain projects, but that such work was outside the scope of his employment responsibilities. So, he decided to start working under these entities on the side "to try to get the job accomplished," thinking that "the ends justified the means." J.A. 1471.28–29. Ultimately, he felt that he had "earned" the money SkyLink paid out to the fake firms. J.A. 1471.42.

Miller also claimed ignorance of the Consortium and Saslaw Campaign frauds because his wife managed the family finances, and he was "focused on doing [his] job." J.A. 1471.15. Though he acknowledged that some of the fraudulent proceeds from these entities went to pay for his own personal expenses, like child support, he stated that "Lynn just handled [those bills] automatically" and he "assumed" that "she would go forward and pay the expense." J.A. 1471.13. He also noted that at the time, he thought their family was in a good financial position because they had his $225,000-per-year SkyLink salary and low expenses.

On cross examination, however, he admitted that he had hatched a "deliberate" and "unethical" "scheme to deceive SkyLink" using bogus law firms, "fake communications," "fake individuals," and other falsities. J.A. 1471.91, 104, 110, 127. And while he initially claimed not to know where the money went or how it was spent, after further questioning he admitted knowing some details. For example, though he initially claimed he was unaware of the bank accounts Lynn opened for Federal Legal Associates and the Straile Group, he later acknowledged that he "intuitively" understood that funds paid out to these fake firms "had to be deposited somewhere." J.A. 1471.112; *see also* J.A. 1471.113 (acknowledging that he knew there was a bank account for Federal Legal Associates "[s]omewhere" because he delivered checks made out to that entity for his wife to deposit). Miller also conceded that he was aware that his wife had opened an unauthorized bank account using the name of his former employer, Federal Legislative Associates, but that he had declined to shut it down. Critically, Miller then admitted that he knew fraudulently obtained funds deposited into these company bank accounts would "eventually" be

transferred to the Millers' joint personal bank account so that they could spend them. J.A. 1471.112–13.

Miller disclaimed any knowledge, however, of his wife's efforts to divert funds from the Consortium and the Saslaw Campaign. He also denied having any involvement in helping Lynn land the treasury job with the campaign. Though he agreed that the same fake law firms and the same bank accounts were used to siphon funds from the Consortium and the Saslaw Campaign while he and Lynn were defrauding SkyLink using the same playbook, he claimed he was "completely unaware" of Lynn's further frauds. J.A. 1471.136. He did admit, however, that mere hours after he learned his wife had been dismissed from the Saslaw Campaign and accused of embezzling funds from the Consortium by the FBI, he sent out a "blast e-mail" to numerous college presidents asking them to donate to the Consortium, which at that point was otherwise "essentially defunct." J.A. 1471.144–45. And he conceded that, as of that date, he and Lynn had "no other income" because he had lost his job at SkyLink and she had been fired from the Saslaw Campaign. J.A. 1471.145.

C.

We now turn to the disputed procedures employed during and after Miller's trial.

Partway through the Government's case-in-chief, Miller indicated he would call his wife to testify. But after conferring with her attorneys, Lynn—who was serving a fifty-six-

month sentence after pleading guilty to conspiracy to commit fraud[4]—decided to invoke "both her spousal immunity against testifying" and her Fifth-Amendment privilege against self-incrimination. J.A. 1462. At the time, Miller's attorney did not object or otherwise explain why those privileges were inapplicable, nor did he explain how Lynn's testimony was necessary for Miller's defense. In fact, he acknowledged that "it wouldn't help [Miller] if [Lynn] were to testify." J.A. 1353.

After the Government rested, Miller orally moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29, but only on the identity-theft charges (Counts 11–12). The district court denied the motion, which Miller never renewed.

Following closing arguments, the district court reviewed its proposed jury instructions with both parties. During this colloquy, Miller objected to the court's proposed willful-blindness instruction regarding the knowledge element for each of his charges. The court partially overruled the objection, finding such an instruction proper for Counts 1–10, but inappropriate for Counts 11–12.

The jury ultimately convicted Miller of Counts 1–10: conspiracy to commit fraud, conspiracy to commit money laundering, and eight counts of fraud. It deadlocked on Counts 11–12, the identify-theft charges, which were later dismissed without prejudice on the Government's motion. The jury also returned a special forfeiture verdict, finding it was

[4] In October 2015, Lynn pleaded guilty to conspiring with Miller to commit wire fraud against SkyLink, the Consortium, and the Saslaw Campaign. *See* Supp. J.A. 3410–14 (amended criminal information detailing the schemes to defraud all three entities and concluding that "[a]ll" were committed "in violation of" 18 U.S.C. § 1349, conspiracy to commit fraud).

more likely than not that the Virginia and Delaware properties were involved in or traceable to the money laundering and fraud.

After the trial concluded, Miller did not file a Rule 29 motion for judgment of acquittal. He did, however, file two motions for a new trial pursuant to Federal Rule of Criminal Procedure 33.[5]

In his first Rule 33 motion—which was timely filed—he sought a new trial on Count 2 (conspiracy to launder money). He also claimed that misleading comments made by the Government at trial triggered Lynn to invoke her Fifth Amendment privilege, which deprived him of "material testimony" related to that charge. J.A. 1600. However, he did not challenge his wife's invocations of her privileges, or the trial court's rulings regarding them.

About a month later, Miller filed an amended—but untimely—Rule 33 motion. In that motion, he argued that the prosecutorial misconduct mentioned in his first motion violated his "right to due process under the [Fifth] Amendment." J.A. 1615. He also renewed his challenge to his conviction for Count 2, seeking a new trial on that count in part on the basis that the Government introduced no evidence of his "subjective intent to

[5] Though he was represented by counsel, Miller drafted these Rule 33 motions pro se. Generally, courts are not required to consider such motions. *United States v. Carranza*, 645 F. App'x 297, 300 (4th Cir. 2016) (per curiam) ("A criminal defendant has no statutory or constitutional right to proceed pro se while simultaneously being represented by counsel." (citing *McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984))). But since the district court reviewed the motions, we choose to also consider them.

conceal" the transactions at issue. J.A. 1619. Finally, he claimed that the district court's willful-blindness instruction was improper and prejudicial.

The district court denied Miller's motions, finding there to be "a mountain of evidence against" him. J.A. 1716. Regarding the alleged prosecutorial misconduct, the court found that Miller had failed to present any affidavit or declaration from Lynn "stating that she was coerced by the [G]overnment," nor had he addressed "the other, independent basis, on which [Lynn] elected not to testify at trial, namely the spousal testimonial privilege." J.A. 1721–22. Though the court acknowledged Miller's amended motion was untimely, it also proceeded to analyze the merits of that motion and concluded this was "a textbook case of a situation in which a willful blindness instruction was appropriate." J.A. 1729.

Miller then filed a Federal Rule of *Civil* Procedure 59(e) motion for reconsideration of the district court's order denying the motions for a new trial, raising many of the same arguments. The district court rejected the motion, noting that Rule 59(e) does not apply to the criminal setting, and further finding that the motion introduced no new evidence or arguments.

The district court ultimately sentenced Miller to eighty-eight months' imprisonment. It also entered a forfeiture order for the Virginia and Delaware properties.

Miller filed timely appeals challenging his convictions and the final forfeiture order,[6] which were consolidated.

II.

On appeal, Miller faces a heavy burden because even under the most favorable of circumstances, "[w]e do not lightly disturb jury verdicts." *United States v. Chavez*, 894 F.3d 593, 608 (4th Cir. 2018). And when a defendant has failed to properly preserve the errors he alleges, we are even more skeptical. Such errors—constitutional or otherwise—are subject to deferential plain-error review. *See* Fed. R. Crim. P. 52(b); *United States v. Olano*, 507 U.S. 725, 731 (1993) ("'No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.'" (quoting *Yakus v. United States*, 321 U.S. 414, 444 (1944))).

"To establish plain error, the appealing party must show that an error (1) was made, (2) is plain . . . , and (3) affects substantial rights." *United States v. Lynn*, 592 F.3d 572, 577 (4th Cir. 2010). "If a legal rule was violated during the district court proceedings, and if the defendant did not waive the rule, then there has been an 'error[.]'" *Olano*, 507 U.S.

[6] Miller's opening brief concludes by requesting, among other things, that this Court vacate the district court's final forfeiture order. However, he fails to independently contest the district court's forfeiture findings. Therefore, we consider this argument waived. *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to '"develop [its] argument"—even if [its] brief takes a passing shot at the issue.'" (quoting *Brown v. Nucor Corp.*, 785 F.3d 895, 923 (4th Cir. 2015) (Agee, J., dissenting))).

at 733–34. That error is "plain" if it is "clear" or "obvious." *Id.* at 734. And that error "affects substantial rights" if it was "prejudicial," meaning it "affected the outcome of the district court proceedings." *Id.*

Further, "[e]ven if an appellant makes this three-part showing, an appellate court may exercise its discretion to correct the error only if it 'seriously affects the fairness, integrity[,] or public reputation of judicial proceedings.'" *Lynn*, 592 F.3d at 577 (quoting *United States v. Massenburg*, 564 F.3d 337, 343 (4th Cir. 2009)).

With these principles in mind, we turn to Miller's challenges, which boil down to four primary arguments. First, Miller claims that his indictment and the proceedings at trial violated his Sixth Amendment rights. Second, he argues that his indictment was constructively amended.[7] Third, he contends that the district court's jury instructions were faulty. Fourth, he argues that his conviction for conspiracy to launder money must be dismissed for lack of sufficient evidence. We consider each in turn.

A.

Miller brings three distinct Sixth Amendment challenges. To start, he claims that the district court's grant of Lynn's "blanket privilege not to testify under the [Fifth] Amendment" violated his right to compel testimony. Opening Br. at 8. Next, he claims that the Government's knowing use of a defective indictment allowed it to seize his assets and

[7] To the extent Miller's constructive-amendment argument could be construed as separately alleging prosecutorial misconduct, that forfeited argument is meritless because Miller failed to show that the Government plainly misstated applicable law or otherwise prejudiced him.

deprive him of the right to the counsel of his choice. Finally, he argues that Count 1 of his indictment was improperly duplicitous. Because he failed to properly preserve any of these challenges before the district court,[8] we review his claims for plain error.

1.

Miller's right-to-compel challenge falters, at minimum, at the third step of the plain-error inquiry because he fails to show how the district court's alleged Fifth Amendment error affected the outcome of his proceedings. Though Miller fails to note it, the district court's decision to allow Lynn not to testify purportedly rested on two different bases: her invocation of her Fifth Amendment rights *and* her spousal testimonial privilege. *See* J.A. 1463 (specifically finding that Lynn "can invoke" her spousal testimonial privilege).

While Miller provides several arguments attacking the district court's Fifth Amendment analysis, he fails to adequately explain why Lynn's spousal testimonial privilege should not apply. *See* Opening Br. at 11 n.2 (only arguing—implausibly—that this privilege was not granted). The district court expressly found that this privilege supplied an "independent basis[] on which [Lynn] elected not to testify at trial." J.A. 1722. Because Miller does not challenge that determination, we assume without deciding that Lynn's spousal testimonial privilege *did* supply an independent basis for her not to testify.

[8] Regarding the duplicity challenge, Miller did file a pretrial motion asking the Government to either (1) provide a bill of particulars further explaining the conspiracy alleged in Count 1 or (2) strike the Consortium and Saslaw Campaign allegations from Count 1. However, he never claimed that Count 1 was duplicitous or otherwise violated his Sixth Amendment rights.

And if it did provide such a basis, then the alleged Fifth Amendment errors could have no impact on the proceedings.

2.

Miller's right-to-counsel-of-his-choice claim is difficult to follow. In essence, he seems to argue that the Government presented "no evidence" to the grand jury that Miller conspired to launder money (Count 2), so the grand jury therefore lacked probable cause to indict Miller on Count 2. Opening Br. at 22. Consequently, he contends, the grand jury must also have lacked probable cause to find that his Virginia and Delaware properties were involved in or traceable to the charged money-laundering offense. And since this latter probable-cause finding allowed the Government to seize those properties and deprive Miller of the assets needed for his defense, the argument goes, his right to the counsel of his choice was violated.

To be sure, Miller does not directly challenge the second probable-cause finding, pertaining to the traceability of his properties to the offense. Nor could he, since we already affirmed this finding on interlocutory appeal. *See United States v. Miller*, 911 F.3d 229, 230 (4th Cir. 2018) (upholding the district court's conclusion that there was probable cause to believe that the Virginia and Delaware properties were "involved in" the charged money-laundering conspiracy and "traceable to" said conspiracy and the underlying fraud charged in the indictment). Instead, we understand Miller to be challenging the probable-cause finding for Count 2 itself, which he claims necessarily underlies the probable-cause finding connecting Count 2 to the seized properties.

Even if we assume that Miller can use Count 2's probable-cause finding to collaterally attack the settled probable-cause finding connecting Count 2 to the seized properties, his argument fails at steps one, two, and three of our plain-error review. To start, the Government presented ample evidence to support the grand jury's probable-cause finding for Count 2, including evidence of complex financial transactions using the bogus entities Miller helped establish as well as the joint personal bank account he shared with Lynn. So, we perceive no error, much less a plain error.

Even if we did identify such an error, we fail to see how it affected the seizure of Miller's assets. The grand jury found probable cause that his Virginia and Delaware properties were involved in or traceable to *Counts 1 through 10*—not just Count 2. And Miller does not allege any defects in his indictment regarding Counts 1 and 3–10. So, even if the probable-cause finding for Count 2 were flawed, the Government would still have been well within its rights to seize Miller's properties based on the underlying and unchallenged probable-cause findings for these other counts.

3.

Next, Miller argues that his indictment prejudiced him because it lumped three frauds—the frauds against SkyLink, the Consortium, and the Saslaw Campaign—"in one conspiracy count" (Count 1). Opening Br. at 26. We have generally understood duplicitous counts to "violat[e] the defendant's Sixth Amendment right to a unanimous verdict," because the jury may "not unanimously agree on the offense that the defendant committed." *United States v. Robinson*, 855 F.3d 265, 269–70 (4th Cir. 2017); *see also United States v. Robinson*, 627 F.3d 941, 957 (4th Cir. 2010) ("Duplicitous indictments

present the risk that a jury divided on two different offenses could nonetheless convict for the improperly fused double count.").

Miller fails to show that his indictment contained an error, much less a plain error. It is well established that "[t]he allegation in a single count of conspiracy to commit several crimes is not duplicitous, for [t]he conspiracy is the crime, and that is one, however diverse its objects." *United States v. Marshall*, 332 F.3d 254, 262 (4th Cir. 2003) (quoting *Braverman v. United States*, 317 U.S. 49, 54 (1942)). That is precisely the situation we have here: one alleged overarching conspiracy—involving the same alleged modus operandi, the same fake entities, the same bank accounts, and the same ends (enriching the Millers)—with three different victims or objects (SkyLink, the Consortium, and the Saslaw Campaign). Therefore, Miller's indictment was not duplicitous.

B.

Miller also argues that the Government "constructively amended the indictment by broadening the basis for convicting Mr. Miller of conspiring to launder money." Opening Br. at 48. Specifically, he claims that the Government impermissibly broadened the basis for Count 2 by (1) failing to adequately distinguish fraud evidence from money-laundering evidence and (2) "telling the jury that it did not have to prove an agreement to launder money to convict him." *Id.* However, Miller's opening brief fails to include any record citations supporting his arguments, so we consider them waived. *See* Fed. R. App. P. 28(a)(8)(A) (requiring the appellant's brief to contain their "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"); *Hensley ex rel. N.C. v. Price*, 876 F.3d 573, 580 n.5 (4th Cir. 2017) (finding waiver

where the appellant failed to comply with Rule 28(a)(8)(A) because "it is not our job 'to wade through the record and make arguments for either party'" (quoting *Friedel v. City of Madison*, 832 F.2d 965, 969 (7th Cir. 1987))); *Edwards v. City of Goldsboro*, 178 F.3d 231, 241 n.6 (4th Cir. 1999) ("Failure to comply with the specific dictates of [Rule 28(a)(8)(A)] with respect to a particular claim triggers abandonment of that claim on appeal.").

C.

Next, Miller challenges the jury instructions on two grounds. First, he argues that the court's money-laundering instruction was flawed. Second, he contends that the district court erroneously issued a willful-blindness instruction for Count 2. Neither argument has merit.

1.

Miller first argues that the district court incorrectly instructed the jury on the sub-elements of Count 2. Because Miller failed to raise this argument below, we review it for plain error. *United States v. Ebersole*, 411 F.3d 517, 526 (4th Cir. 2005) (holding that the defendant's "failure to specifically object to [an] instruction during the trial [normally] . . . constrain[s] us to review its substance for plain error only," with one exception not applicable here (citing Fed. R. Crim. P. 30(d))).

Miller's indictment charged him with conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). That subsection punishes "[a]ny person who conspires to commit any offense defined in [section 1956] or section 1957." 18 U.S.C. § 1956(h). Miller's indictment charged a conspiracy to commit two distinct offenses: "concealment

money laundering," in violation of 18 U.S.C. § 1956(a)(1)(B)(i), and "transactional money laundering," in violation of 18 U.S.C. § 1957. J.A. 1581.

Miller only alleges a defect with the court's concealment-money-laundering instruction. But liability under § 1956(h) can be established by showing a conspiracy to commit *either* object crime. *See United States v. Bolden*, 325 F.3d 471, 492 (4th Cir. 2003) (holding that a § 1956(h) count alleging five statutory objects was valid, observing that "[c]ourts have uniformly upheld multiple-object conspiracies, and they have consistently concluded that a guilty verdict must be sustained if the evidence shows that the conspiracy furthered any one of the objects alleged"). And in fact, the jury unanimously found that Miller had conspired to commit concealment *and* transactional money laundering. Therefore, even if we assume that the district court's concealment-money-laundering instruction were flawed, that error did not affect the outcome of Miller's proceedings because he was nevertheless convicted of conspiring to commit transactional money laundering. Therefore, his claim cannot survive plain-error review.

2.

Miller next argues that the district court erred by instructing the jury that the knowledge element of Count 2 could be shown "from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of [a] fact."[9] J.A. 1471.335. Because Miller objected to this instruction at trial, we review the court's decision to give this

[9] The district court's willful-blindness instruction applied to Counts 1 through 10. However, Miller only challenges the instruction as it pertained to Count 2.

instruction for an abuse of discretion. *United States v. Savage*, 885 F.3d 212, 222 (4th Cir. 2018).

In this Circuit, "[i]t is well established that where a defendant asserts that he did not have the requisite *mens rea* to meet the elements of the crime but 'evidence supports an inference of deliberate ignorance,' a willful blindness instruction to the jury is appropriate." *United States v. Ali*, 735 F.3d 176, 187 (4th Cir. 2013) (quoting *United States v. Ruhe*, 191 F.3d 376, 384 (4th Cir. 1999)). Evidence supports an inference of deliberate ignorance if it tends to show that (1) the defendant "subjectively believe[s] that there is a high probability that a fact exists" and (2) the defendant took "deliberate actions to avoid learning of that fact." *United States v. Hale*, 857 F.3d 158, 168 (4th Cir. 2017) (quoting *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011)).

In this case, there was ample evidence to infer that Miller subjectively believed there was a high probability Lynn was laundering their money. Miller himself helped his wife establish the two bogus law firms that he and his wife used to defraud SkyLink. He "intuitively" understood that funds paid out to these fake firms "had to be deposited somewhere" and that these funds would "eventually" be transferred to the Millers' joint personal bank account—for which he received monthly statements—so that they could spend them. J.A. 1471.112–13. In other words, Miller was "intuitively" aware that his wife

was shifting fraudulent proceeds from fake bank accounts into their personal bank account, apparently to conceal their source—also known as money laundering.[10]

There was also ample evidence to infer that Miller took deliberate actions to avoid learning the specifics of the money-laundering scheme. For example, though he acknowledged receiving bank statements for the joint account he managed with Lynn, he claimed that he never read them. In addition, while he was a self-professed tax and finance expert, he claimed he was, in the prosecutor's words, "literally one of the only people in America without a debit card, without a credit card, or a checkbook." J.A. 1471.234. Also, though he was aware that his wife had opened an unauthorized bank account using the name of his former employer, Federal Legislative Associates, he never asked her to close that account. And while he had numerous personal expenses—including mortgages, vacations, child support, attorneys' fees, and country-club dues—he claimed he never stopped to ask where all the money was coming from, even after he was terminated from his SkyLink job.

Therefore, we conclude that the district court did not abuse its discretion by giving the jury a willful-blindness instruction for Count 2.

[10] Miller also did not file or pay any federal income taxes for tax years 2011, 2012, or 2013—the same period when he was receiving additional income from Federal Legal Associates and the Straile Group.

D.

Lastly, Miller argues that his conviction for Count 2 must be dismissed for lack of *sufficient* evidence.[11] However, Miller never preserved such a challenge to Count 2 in a Rule 29 motion for a judgment of acquittal, as his Rule 29 motion pertained only to Counts 11 and 12. This means his challenge is forfeited unless a "manifest miscarriage of justice" has occurred. *United States v. Duroseau*, 26 F.4th 674, 678 (4th Cir. 2022) (quoting *United States v. Lam*, 677 F.3d 190, 200 n.10 (4th Cir. 2012)).[12] And after reviewing the record here, we conclude it would be unjust to *reverse* Miller's conviction given the "mountain of evidence" against him. J.A. 1716; *see Johnson v. United States*, 520 U.S. 461, 470 (1997) (holding that "the *reversal* of a conviction" supported by "overwhelming" evidence would itself "'seriously affect[] the fairness, integrity or public reputation of judicial proceedings'" (emphasis added) (quoting *Olano*, 507 U.S. at 736)).

Miller did, however, file a timely Rule 33 motion for a new trial, dismissing the Government's evidence for Count 2 as merely "circumstantial." J.A. 1599. To the extent that Miller's argument can be characterized as a challenge to the *weight* of the evidence

[11] In the conclusion of his opening brief, Miller also asks this Court to dismiss Count 1 for insufficient evidence. However, his brief contains no insufficiency argument for Count 1, so we consider any such argument waived. *Grayson O*, 856 F.3d at 316.

[12] Although *Lam* referred to waiver, not forfeiture, we have recently clarified that, "[b]ecause courts do in fact review the newly asserted grounds for Rule 29 motions to determine if a manifest miscarriage of justice occurred, it is clear that these Rule 29 cases actually involve forfeiture, not waiver." *Duroseau*, 26 F.4th at 678 n.2.

supporting Count 2, we review the district court's denial of his motion for an abuse of discretion. *United States v. Smith*, 451 F.3d 209, 216–17 (4th Cir. 2006).

When conducting this review, we are mindful that the district court's authority under Rule 33 "is much broader than when it is deciding a motion to acquit on the ground of insufficient evidence." *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985). For example, "[i]n deciding a motion for a new trial, the district court is not constrained by the requirement that it view the evidence in the light most favorable to the government" and "may evaluate the credibility of the witnesses." *Id.* However, "a trial court 'should exercise its discretion to [award] a new trial sparingly,' and a jury verdict is not to be overturned except in the rare circumstance when the evidence 'weighs *heavily*' against it." *Smith*, 451 F.3d at 217 (emphasis added) (quoting *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003)).

As explained at length above, the evidence "weighs heavily" *against Miller*. He and his wife used the same playbook to defraud three different entities and funnel money into accounts that Miller "intuitively" knew would be transferred to his joint personal account. Though he claimed ignorance of his wife's financial machinations, the Government attacked his credibility by pointing out that Miller monitored Lynn's dealings enough to know their level of credit-card debt. It also introduced evidence showing that Miller regularly received bank statements for his account yet never questioned where all of the money was coming from, even after he was fired from SkyLink. Therefore, we have little trouble concluding the district court did not abuse its discretion in denying Miller's Rule 33 motion.

## III.

For the foregoing reasons, we affirm Miller's convictions.

*AFFIRMED*