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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. DOUGLAS DARREN MALATARE, Defendant - Appellant.	No. 25-675 D.C. No. 4:23-cr-00080-BMM-1 MEMORANDUM[*]

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Argued and Submitted March 9, 2026
Portland, Oregon

Before: COLLINS and FORREST, Circuit Judges, and FITZWATER,[**] District Judge.

Defendant-Appellant Douglas Darren Malatare was convicted by a jury of distribution of fentanyl resulting in death and possession of fentanyl with the intent to distribute. He now appeals the district court's admission of two text messages into

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

evidence, denial of his motion for acquittal, and denial of his motion for a new trial. We affirm.

1. ***Evidentiary Ruling.*** We review decisions to admit evidence for abuse of discretion. *See United States v. Lillard*, 354 F.3d 850, 853 (9th Cir. 2003). Malatare argues that the district court erred in admitting the two text messages that he received from the decedent under the hearsay exception for statements against penal interest because the text messages would not, on their face, subject the decedent to criminal liability and the surrounding circumstances did not indicate their trustworthiness. Assuming without deciding that the two text messages constitute hearsay, we disagree.

A statement against penal interest is admissible where: "(1) the declarant is unavailable as a witness; (2) the statement so far tended to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless he believed it to be true; and (3) corroborating circumstances clearly indicate the trustworthiness of the statement." *United States v. Paguio*, 114 F.3d 928, 932 (9th Cir. 1997). Whether a statement tends to subject the declarant to criminal liability depends on "all the surrounding circumstances." *Williamson v. United States*, 512 U.S. 594, 603–04 (1994). A statement need not be an outright confession, but it "must, in a real and tangible way, subject [the declarant] to criminal liability." *United States v. Hoyos*, 573 F.2d 1111, 1115 (9th Cir. 1978).

Here, the Government presented testimony that local drug-buyers and sellers "would avoid using the names of drugs" and would instead use slang, including "I'm looking," or "Who has?" The Government also presented testimony that when local drug-buyers sought to buy a half-pill of fentanyl, they would use the language, "Can I get a half?" Given this foundation, the decedent's statements in the two admitted text messages confirming that he was "looking," indicating that he "c[ould] only afford a half," and acknowledging Malatare's instruction that the decedent "[w]atch for [him]" indicated that the decedent was involved in a fentanyl transaction, which would subject him to criminal liability. *See United States v. Nazemian*, 948 F.2d 522, 530 (9th Cir. 1991) (reasoning that a statement indicating a defendant was involved in a heroin transaction was against the defendant's penal interest because it clearly tended to subject him to criminal liability); *see also United States v. Benveniste*, 564 F.2d 335, 341–42 (9th Cir. 1977) (holding that statements implicating someone as a participant in a drug sale are against that person's penal interest).

Whether the surrounding circumstances corroborate the statement's trustworthiness depends on four non-exhaustive factors: "(a) the time of the declaration and the party to whom it was made; (b) the existence of corroborating evidence; (c) the extent to which the declaration is really against the declarant's penal interest; and (d) the availability of the declarant as a witness." *United States v. Oropeza*, 564 F.2d 316, 325 (9th Cir. 1977). All four factors support the

trustworthiness of the two text messages at issue.

First, the messages were not statements made to authorities while the decedent was held in custody. Second, the Government presented testimony that Malatare routinely trafficked fentanyl and had recently purchased a large quantity of fentanyl that he intended to sell, that Malatare was familiar with the language commonly used in illegal fentanyl transactions, that Malatare came to the decedent's home the afternoon before his death, and that the decedent exhibited symptoms of fentanyl intoxication shortly after meeting with Malatare. Likewise, fentanyl residue was found in the decedent's bedroom, and acute fentanyl intoxication was the decedent's cause of death. Third, the text messages did not tend to inculpate anyone other than the decedent. And fourth, the decedent's unavailability is not in question. We conclude the district court did not abuse its discretion in admitting the two text messages.

2. ***Motion for Acquittal.*** "We review the district court's denial of [a] motion for a judgment of acquittal *de novo*." *United States v. Hernandez*, 105 F.3d 1330, 1332 (9th Cir. 1997). "There is sufficient evidence to support a conviction if, reviewing the evidence in the light most favorable to the Government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* Our review "must respect the exclusive province of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable

inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict." *United States v. Goode*, 814 F.2d 1353, 1355 (9th Cir. 1987) (citation omitted).

To find Malatare guilty on the first count, the jury had to find beyond a reasonable doubt (1) that Malatare "knowingly distributed fentanyl," (2) that he "knew it was fentanyl," and (3) that the fentanyl he distributed was the but-for cause of the decedent's death. Malatare argues there was no evidence that he was the source of fentanyl found in the decedent's bedroom or that fentanyl he distributed caused the decedent's death. Malatare also asserts that the amount of fentanyl in the decedent's system when he died could have come from multiple pills. And beyond the improperly admitted text messages, Malatare claims there was no evidence placing him at the decedent's home at the relevant time.

To find Malatare guilty on the second count, the jury had to find beyond a reasonable doubt that Malatare (1) "knowingly possessed fentanyl" and (2) possessed fentanyl "with the intent to distribute it." Malatare contends the evidence was insufficient to prove that he had the requisite intent to distribute fentanyl.

Viewing the evidence in the light most favorable to the Government, we conclude that a rational jury could have found the essential elements of both counts beyond a reasonable doubt. Thus, we determine that the district did not err in denying

Malatare's motion for acquittal.

3. ***Motion for a New Trial.*** "We review the denial of a motion for a new trial for an abuse of discretion." *United States v. Mack*, 362 F.3d 597, 600 (9th Cir. 2004) (internal quotation marks and citation omitted). Although "[a] district court's power to grant a motion for a new trial is much broader than its power to grant a motion for judgment of acquittal[,] . . . [t]he decision is within the sound discretion of the district court, and the appellant carries a significant burden to show an abuse of discretion." *United States v. A. Lanoy Alston, D.M.D., P.C.*, 974 F.2d 1206, 1211–12 (9th Cir. 1992) (internal quotation marks and citations omitted). Malatare challenges the district court's denial of his motion for a new trial only on the ground that the district court's admission of the two text messages "amounted to a 'serious miscarriage of justice.'" Because the district court did not abuse its discretion in admitting the two text messages, we likewise conclude that it did not abuse its discretion in denying Malatare's motion for a new trial.

AFFIRMED.