United States Court of Appeals
For the Eighth Circuit

No. 23-2280

United States of America

Plaintiff - Appellee

v.

Bruce E. Alexander

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: April 10, 2024
Filed: August 23, 2024

Before SMITH, WOLLMAN, and SHEPHERD, Circuit Judges.

SMITH, Circuit Judge.

Bruce Alexander and Terrence Gay were charged in a two-count indictment. The first charge was conspiracy to distribute 400 grams or more of a mixture or substance containing fentanyl, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A). The second charge was possession with intent to distribute 400 grams or more of a mixture or substance containing fentanyl, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). Gay pleaded guilty to both charges. Alexander pleaded

not guilty and proceeded to trial. A jury found Alexander guilty on both counts. Alexander appeals the district court's[1] decision to exclude an exculpatory statement from Gay, the court's handling of three government witnesses, and the court's comments made during the trial. Finding no reversible error, we affirm the district court.

I. *Background*

In June 2021, Alexander and Gay were traveling in a rental SUV from California to Ohio. In Missouri, State Highway Patrol Trooper Beau Ryun pulled over the SUV for following another vehicle too closely. When stopped, Alexander was driving the SUV while Gay occupied the front passenger seat. Trooper Ryun asked Alexander to sit in the patrol car and provide answers for a report. While seated next to Alexander, Trooper Ryun began asking questions about their trip, including their place of origin. Alexander said that he was returning to Ohio from Los Angeles, California. He also mentioned that he traveled to California to buy a motorcycle but that the seller's price was too high. Trooper Ryun asked for consent to search the SUV. Alexander directed the trooper to Gay. Trooper Ryun spoke with Gay, and while conversing with Trooper Ryun, Gay voluntarily handed the trooper a bundle of marijuana cigarettes. After receiving the cigarettes, Trooper Ryun ordered Gay out of the SUV. Trooper Ryun searched the SUV while the backup officer, Trooper Brooks McGinnis, watched Gay and Alexander.

During the search, Trooper Ryun found contraband. While searching the trunk area, he found upholstery tools and packages of edibles containing THC. Those discoveries led the trooper to conduct an X-ray scan of the SUV. The scan revealed brick-shaped packages. Trooper Ryun recovered the packages, which contained over 400 grams of fentanyl. Trooper McGinnis arrested Gay, and Trooper Ryun arrested Alexander. During his arrest, Gay told Trooper McGinnis that Alexander did not have anything to do with the drugs. Trooper McGinnis found about $8,000 in cash

[1]The Honorable David Gregory Kays, United States District Judge for the Western District of Missouri.

in Gay's pocket. Alexander had about $2,000 in cash on his person and said that he was unaware of the $8,000 in Gay's pocket.

Soon after their arrest, Alexander and Gay were transported to a weigh station where DEA officers interviewed them. DEA Officer Greg Primm interviewed Alexander, and DEA Officer Martin Dye interviewed Gay. Gay told Officer Dye that he made three prior trips to Los Angeles to pick up fentanyl and heroin for a drug trafficking organization. Gay also said that Alexander had made no prior trips with him and that Alexander did not know that Gay was transporting drugs. Alexander told Officer Primm that he went to California to buy a motorcycle. When Officer Primm further questioned Alexander about his time in Los Angeles, Alexander could not remember where he stayed, what shops he went to, or how he came to drive the SUV. Alexander also denied having any affiliation with the SUV.

After the indictment, Gay was released on bond and pleaded guilty without a plea agreement to both counts via video conference. Gay never surrendered to the U.S. Marshals and remains a fugitive from justice. Alexander pleaded not guilty and proceeded to trial.

Alexander intended to introduce Gay's exculpatory statements into evidence. But before trial, the government moved to exclude Gay's statements on hearsay grounds in a motion in limine. The district court granted the government's motion and excluded Gay's exculpatory statements from evidence under Federal Rule of Evidence 804(b)(3).

The district court held a three-day jury trial. During witness examination, the district court occasionally interjected. The government's case included testimony from Trooper Ryun, Trooper McGinnis, and Officer Primm who testified as expert and fact witnesses. Alexander testified during his defense. He said that Gay planned the entire trip and bought one-way plane tickets to Los Angeles for the two of them about a week before the trip. Alexander also testified that he was surprised when he discovered that they would have to drive back to Ohio. As for the motorcycle,

Alexander testified that he made no prior arrangements for its transport to Ohio before he flew to Los Angeles. Alexander reasoned that he would have secured transport for the motorcycle following the purchase. The selling price of the type of motorcycle he was looking at on Facebook and Craigslist was "about $1,500." R. Doc. 123, at 58. Officer Primm testified that when he looked at Alexander's driver's license at the weigh station, it lacked a motorcycle endorsement. He also commented that Silver Wing Scooters—the type of motorcycle Alexander sought to purchase—are popular models and widely available.

The jury returned guilty verdicts on both counts. At sentencing, the court calculated Alexander's Guidelines range as 188 to 235 months' imprisonment, and it sentenced him to 216 months. Alexander appeals the district court's evidentiary findings and trial-management decisions.

II. *Discussion*

A. *Gay's Exculpatory Statements*

Alexander first contends that the district court's ruling that excluded Gay's exculpatory statements from evidence violated Rule 804(b)(3) and his Fifth Amendment right to present a complete defense.

"Generally, preserved evidentiary challenges are reviewed under the [deferential] abuse of discretion standard. If the challenge implicates a constitutional right, our review is *de novo*." *United States v. Arias*, 74 F.4th 544, 550 (8th Cir. 2023) (citation omitted). Therefore, we review the district court's decision to exclude Gay's statement for an abuse of discretion, but we review that decision's effect on Alexander's constitutional right de novo. *See United States v. Wadena*, 152 F.3d 831, 854 (8th Cir. 1998). "We will reverse, however, only if the error is more than harmless. Thus, even when an evidentiary ruling is improper, we will reverse a conviction on this basis only when the ruling affected substantial rights or had more than a slight influence on the verdict." *United States v. White*, 557 F.3d 855, 857–58 (8th Cir. 2009) (cleaned up). Under Rule 804(b)(3),

> a statement is not excluded as hearsay if the declarant is unavailable as a witness and the statement was against the declarant's penal interest. To be admissible as a statement against penal interest, a three-prong test must be satisfied: (1) the declarant must be unavailable as a witness, (2) the statement must so far tend to subject the declarant to criminal liability that a reasonable person in the declarant's position would not have made the statement unless he or she believed it to be true, and (3) corroborating circumstances clearly indicate the trustworthiness of the statement.

United States v. Honken, 541 F.3d 1146, 1161 (8th Cir. 2008) (cleaned up). The parties agree that Gay was unavailable but disagree on the other two prongs.

As a preliminary matter, we reject Alexander's tardy argument that the corroboration prong of Rule 804(b)(3) is "required primarily to establish whether the statement was actually made, not whether there is some possibility . . . that it might not be true." Appellant's Reply Br. at 11. "As a general rule, we will not consider arguments raised for the first time in a reply brief." *Barham v. Reliance Standard Life Ins. Co.*, 441 F.3d 581, 584 (8th Cir. 2006). The two primary cases Alexander relies on, *United States v. Bagley*, 537 F.2d 162 (5th Cir. 1976), and *United States v. Goodlow*, 500 F.2d 954 (8th Cir. 1974), are not referenced in his opening brief. But even if we view this argument as a supplementation of one in his opening brief, we reject it. *See Barham*, 441 F.3d at 584 ("We are not precluded from [addressing] . . . the argument raised in the reply brief [when it] supplements an argument raised in a party's initial brief.").

Bagley is unpersuasive. In *Bagley*, the Fifth Circuit said that trustworthiness has two elements: "the statement must actually have been made by the declarant, and it must afford a basis for believing the truth of the matter asserted." 537 F.2d at 167. Even if we adopt those two requirements here, it does not support Alexander's interpretation of Rule 804(b)(3)'s corroboration prong. Neither party contests whether Gay's statement was made. Rather, the focus is on its truthfulness. Thus, even under *Bagley*, we would need to be sure that "the proffered statement here . . .

affords a basis for belief in its truthfulness [because] it was, in fact, made." *Id.*; *see also Honken*, 541 F.3d at 1161 (third prong).

Alexander's reliance on our decision in *Goodlow* is also unhelpful. He points to *Goodlow* and argues that there "this Court correctly applied the [*Bagley* test by] looking to the corroborating circumstances to determine not whether a statement against interest was true, but rather whether it was made." Appellant's Reply Br. at 10 (internal quotation marks omitted). But *Goodlow* was decided before Rule 804(b)(3) was enacted. *Goodlow*, 500 F.2d at 957 ("[Rule 804(b)(3) was] not controlling at the time of the defendants' trial nor [is it] yet in effect."); *see also* Act of Jan. 2, 1975, Pub. L. No. 93-595, 88 Stat. 1926. *Goodlow*'s discussion of the not-yet-effective Rule 804(b)(3)'s corroborating circumstances prong misses its mark. We have not cited *Goodlow* as having a clarifying effect on the corroborating circumstances prong in Rule 804(b)(3), and we decline to read that into the opinion now.[2]

Moreover, *Goodlow* concerned whether the district court correctly excluded a declarant's statement under "the common law" "exception[] to the [hearsay] rule . . . of declarations of third parties, made contrary to their own interest." *Donnelly v. United States*, 228 U.S. 243, 273 (1913); *Goodlow*, 500 F.2d at 957 (citing *Donnelly*). In answering whether the district court correctly applied the common-law hearsay exception, we used proposed Rule 804(b)(3) as a *tool* for understanding the common-law rule because "the proposed rule which recognizes the admissibility of declarations against penal interest simply reflects the overwhelming weight of authority on that question." *Goodlow*, 500 F.2d at 957. Put simply, *Goodlow*

[2]We have only cited *Goodlow* twice, and neither of those times did we cite it for its interpretation of Rule 804. *United States v. Hadley*, 671 F.2d 1112, 1115 (8th Cir. 1982) (citing *Goodlow* to show that "show-ups are inherently suggestive and ordinarily cannot be condoned when a line-up procedure is readily available"); *United States v. Riley*, 657 F.2d 1377, 1381 n.5 (8th Cir. 1981) (citing *Goodlow* because its text contained the "proposed rules").

concerned the district court's application of the common-law hearsay exception, not Rule 804.

For this case, we rely on the text of Rule 804. Rule 804(b)(3) states that the statement in question must be "supported by corroborating circumstances that clearly indicate its *trustworthiness*." Fed. R. Evid. 804(b)(3)(B) (emphasis added). Assuming without deciding that Gay's exculpatory statement opened him to criminal liability, *see Honken*, 541 F.3d at 1161 (second prong), it nonetheless lacks sufficient corroborating circumstances to indicate its trustworthiness.

In *United States v. Rasmussen*, we laid out the five factors we use to determine "[t]he trustworthiness of a statement against the declarant's penal interest." 790 F.2d 55, 56 (8th Cir. 1986). Those factors are:

> (1) whether there is any apparent motive for the out-of-court declarant to misrepresent the matter, (2) the general character of the speaker, (3) whether other people heard the out-of-court statement, (4) whether the statement was made spontaneously, [and] (5) the timing of the declaration and the relationship between the speaker and the witness.

Id.

Here, the district court analyzed the corroborating circumstances under the *Rasmussen* factors. The district court explained:

> Defendant and Gay are relatives, and thus Gay had motive to misrepresent that Defendant was unaware of the fentanyl and not involved in the drug trafficking organization. Further, Gay's decision to flee from justice after he pled guilty does not speak well of his character. Finally, Gay's statements exculpating Defendant do not appear to have been made spontaneously. Gay changed his story three times, stating first that he and Defendant had been on vacation, then stating that Defendant was not involved, and finally attempting to persuade Defendant to cooperate with law enforcement.

R. Doc. 71, at 4.

The district court did not abuse its discretion. Gay's close relationship with Alexander supports the district court's decision that Gay's statement lacks sufficient trustworthiness. Despite Gay and Alexander not being related, they were close friends who called each other cousin. Their close friendship reduces the trustworthiness of Gay's statement. *See United States v. Bobo*, 994 F.2d 524, 528 (8th Cir. 1993) ("[C]lose relationships, such as the sibling relationship, have long been recognized to diminish the trustworthiness of hearsay statements against the declarant's penal interest."). But in addition to their close friendship, Gay's failure to surrender himself to the U.S. Marshals—and status as a fugitive from justice—reflects poorly on his character and further reduces the trustworthiness of his statement. Combining Gay and Alexander's close friendship with Gay's subsequent absconder from the U.S. Marshals diminishes the trustworthiness of Gay's statement about Alexander's involvement to such a degree that the district court did not err excluding it from trial.

Alexander argues that two cases support his argument: *United States v. One Star*, 979 F.2d 1319 (8th Cir. 1992), and *United States v. Garcia*, 986 F.2d 1135 (7th Cir. 1993). In *One Star*, the defendant's brother made inculpatory statements that were against the brother's penal interest, the statements were consistent with other statements made spontaneously to officers, and the information in the inculpatory statements was corroborated by the physical evidence. 979 F.2d at 1322–23. In *Garcia*, the declarant and the defendant were not friends, the declarant made the exculpatory statement voluntarily, the statement was not made to curry favor with police, and the declarant repeated the exculpatory statements several times. 986 F.2d at 1140.

This case differs from *One Star* and *Garcia*. In *One Star*, the physical evidence corroborated the statements made by the defendant's brother. But here, Gay's statement is not corroborated by any physical evidence. In *Garcia*, the

declarant and defendant were not friends. But here, Alexander and Gay were close friends and called each other cousin.

B. *Alexander's Fifth Amendment Right*

Alexander also argues that not admitting Gay's exculpatory statement violated his Fifth Amendment right to present a complete defense. We have said:

> The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. The Constitution does not, however, guarantee that criminal defendants may call every witness they choose. An accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence. State and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a defense so long as they are not arbitrary or disproportionate to the purposes they are designed to serve.

Khaalid v. Bowersox, 259 F.3d 975, 978 (8th Cir. 2001) (cleaned up). Alexander does not argue that Rule 804(b)(3) is "arbitrary or disproportionate to the purposes [it is] designed to serve." *Id.* (internal quotation marks omitted). Thus, Alexander's Fifth Amendment right to present a complete defense was not violated when the district court excluded Gay's statement from evidence.[3]

[3]Alexander also mentions, in a footnote, that Rule 807 would allow Gay's statements into evidence. We will not address this argument because "[a]llegations of error not accompanied by convincing argument and citation to authority need not be addressed on appeal." *Heuton v. Ford Motor Co.*, 930 F.3d 1015, 1023 (8th Cir. 2019) (internal quotation marks omitted); *see also Ritchie Cap. Mgmt., L.L.C. v. Jeffries*, 653 F.3d 755, 763 n.4 (8th Cir. 2011) ("We likewise refuse to address the merits of [the parties'] . . . argument mentioned in their brief only by way of a footnote.").

C. *Witness Testimony*

Next, Alexander argues that the district court erred in its handling of three government witnesses. First, he contends that Trooper Ryun exceeded his expertise by testifying that staring and abdominal movements may indicate that criminal activity is afoot. Second, Alexander argues that both Officer Primm and Trooper Ryun crossed a line when they testified that they found Alexander to be deceptive and evasive when they spoke with him. And finally, Alexander argues that the district court did not mitigate the risks of having Trooper Ryun, Trooper McGinnis, and Officer Primm testify as dual witnesses.

Because Alexander did not raise these arguments in the district court, we review for plain error. "For plain error, [Alexander] must show there was an error, the error is clear or obvious under current law, the error affected [his] substantial rights, and the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *United States v. Abarca*, 61 F.4th 578, 580 (8th Cir. 2023) (internal quotation marks omitted). "To establish [that] the error affected [his] substantial rights, [Alexander] must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *United States v. Patterson*, 68 F.4th 402, 421 (8th Cir. 2023) (internal quotation marks omitted).

1. *Trooper Ryun*

Alexander argues that Trooper Ryun went outside of his area of expertise when he opined that actions like staring or a person's abdominal movements may indicate criminal activity. We have said that "Federal Rule of Evidence 702 permits a district court to allow the testimony of a witness whose knowledge, skill, training, experience or education will assist a trier of fact in understanding an area involving specialized subject matter." *United States v. Spotted Elk*, 548 F.3d 641, 663 (8th Cir. 2008) (quoting *United States v. Solorio–Tafolla*, 324 F.3d 964, 966 (8th Cir. 2003)).

The district court did not plainly err by allowing Trooper Ryun to answer the government's question about what actions indicated criminal activity. Part of the government's notice of expert witnesses said that Trooper "Ryun can offer expert

testimony related to . . . behaviors commonly encountered during traffic stops where criminal activity is present." R. Doc. 65, at 3. During trial, the government asked Trooper Ryun: "What about the defendant's appearance or expression or behavior caused you to describe him as fearful?" R. Doc. 121, at 68. Trooper Ryun responded: "The expression that he was displaying on his face was a very blank stare. . . . [J]ust like a panicked, fearful expression of a very blank stare as we're engaging with each other." *Id.* Later in the direct examination, the government asked: "During your conversation with the defendant and your interaction with him, did you observe anything noteworthy or significant about his demeanor?" *Id.* at 72. Trooper Ryun responded: "I just noted he still had a blank stare and his abdomen was quivering as we spoke." *Id.* When asked to explain what he meant by saying Alexander's abdomen was quivering, Trooper Ryun said: "As I'm sitting in my driver's seat and I'm speaking with people, I oftentimes look at the abdomen around the belly-button area; and oftentimes when people are under an extreme amount of stress, that area of the stomach will move in and out, in like a quivering motion." *Id.* This testimony reasonably fell within his experience with "behaviors commonly encountered during traffic stops where criminal activity is present." R. Doc. 65, at 3; *see United States v. Nungaray*, No. 96-50424, 1998 WL 339668, at *1 (9th Cir. Apr. 24, 1998) ("It is permissible for an expert, however, to testify that a defendant's innocent-appearing behavior is consistent with or indicates illegal activity." (citing *United States v. Alonso*, 48 F.3d 1536, 1541 (9th Cir. 1995))).

2. *Trooper Ryun and Officer Primm*

Second, Alexander argues that the district court erred when it allowed Officer Primm and Trooper Ryun to testify that they found Alexander deceptive and evasive when they spoke with him. "To establish [that] the error affected [his] substantial rights, [Alexander] must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Patterson*, 68 F.4th at 421 (internal quotation marks omitted).

Assuming without deciding that Trooper Ryun's and Officer Primm's testimony about finding Alexander to be untrustworthy was erroneous, such error

did not affect Alexander's substantial rights. If Trooper Ryun's and Officer Primm's statements were omitted, the remaining evidence would support the proceeding's outcome. This evidence showed that Alexander was driving the SUV, Alexander and Gay were close friends, Gay admitted to trafficking drugs, Alexander and Gay carried thousands of dollars in cash, Alexander said that he never noticed that Gay had almost $8,000 in his pocket, and Alexander gave police an unusual story about going to California to buy a $1,500 motorcycle. Given these facts, the removal of Trooper Ryun's and Officer Primm's testimony would not have changed the outcome of the proceeding.

Alexander argues that his case is like *United States v. Azure*, 801 F.2d 336 (8th Cir. 1986), and *United States v. Hill*, 749 F.3d 1250 (10th Cir. 2014). In *Azure*, a pediatrician testified that a child's story was believable. 801 F.2d at 339. We held that the pediatrician's testimony improperly "bolstered" the child's credibility. *Id.* at 341. We also held that the pediatrician's testimony was not a harmless error because the child "was a key government witness in this case, and her credibility was a very important issue." *Id.* In *Hill*, an FBI special agent testified in a bank robbery case. 749 F.3d at 1255. The agent's testimony included statements regarding the credibility of the defendant. *Id.* 1255–56. The Tenth Circuit held that the agent's testimony was not admissible under Rule 702 and that the error affected the defendant's substantial rights because there was "a reasonable probability that but for [the improper testimony], the result of [the defendant's] trial would have been different." *Id.* at 1265.

This case is unlike *Azure*. Here, the testimony by Officer Primm and Trooper Ryun did not have a "substantial influence" on the proceeding. *See Azure*, 801 F.2d at 341. Officer Primm's comment, for example, came in response to the government's question that asked: "[B]ased on your training and experience, when [Alexander] had made statements to you like 'I'm not affiliated to that vehicle,' what did that make you believe?" R. Doc. 122, at 203. Officer Primm responded: "I believed he was attempting to conceal the information that he had and he was omitting the truth." *Id.* Before Officer Primm made that statement, he testified that

he has been an officer with the Missouri State Highway Patrol for "[t]wenty-one years" and received training in criminal interdiction. *Id.* at 170. He explained what criminal interdiction is to the jury:

> Criminal interdiction is the enforcement efforts that we take . . . during the course of our traffic enforcement duties as a Missouri state trooper. We attempt to identify people who may be using the highways to further their criminal activity. And it really varies from human trafficking to drug trafficking and all things in between.

Id. at 172. He further explained that his role as a task force officer with the DEA provided him the opportunity to work on "large-scale drug trafficking organization investigations, as well as conducting controlled deliveries of contraband, as well as performing undercover work." *Id.* at 173. Officer Primm's testimony about Alexander "was not elaborate and there was no evidence of any training or education giving [Officer Primm] some *great advantage* over the jurors in divining truth." *United States v. Roy*, 843 F.2d 305, 309 (8th Cir. 1988) (emphasis added). Officer Primm's testimony "was not likely to sweep the jurors off their feet" and thus did not have a substantial influence on the proceeding. *Id.*

This case is also unlike *Hill*. As discussed, there is not "a reasonable probability that . . . the result of [Alexander]'s trial would have been different" if Officer Primm's comment is omitted from the trial record. *Hill*, 749 F.3d at 1265. A jury trial is an engine for determining facts; we are satisfied that the jury decided whom to believe.

3. *Dual-Witness Testimony*

Alexander also argues that the district court did not mitigate the effects of having Trooper Ryun, Trooper McGinnis, and Officer Primm give dual-witness testimony.

> Investigating officers are sometimes in a position to provide [two] forms of permissible opinion testimony. As lay witnesses, they may

> offer testimony that is rationally based on their perceptions during the investigation. And as expert witnesses, they may offer opinion testimony that is based on specialized knowledge gained from training and experience. We have not categorically prohibited dual-role testimony by case agents when the prosecution needs to make use of the expertise of a case agent providing lay testimony. . . .
>
> [But] district courts and counsel should take appropriate measures to minimize the problems that may arise from dual-role testimony by a case agent. One measure that is often appropriate is bifurcating the questioning, but other measures may also be appropriate so long as the questioning and jury instructions sufficiently guard against the risks associated with dual-role testimony.

United States v. Overton, 971 F.3d 756, 762–63 (8th Cir. 2020) (cleaned up).[4]

Having reviewed the record, we conclude that the district court did not plainly err permitting dual-witness testimony. Here, when Trooper Ryun, Trooper McGinnis, and Officer Primm gave expert testimony it was often preceded by

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[4]We identified the risks associated with dual-witness testimony in *United States v. Moralez*, 808 F.3d 362 (8th Cir. 2015). Those risks are that

> (1) the witness's aura of credibility as an expert may inflate the credibility of her perception as a fact witness in the eyes of the jury; (2) opposing counsel is limited in cross-examining the witness due to the risk that an unsuccessful attempt to impeach her expertise will collaterally bolster the credibility of her fact testimony; (3) the witness may stray between roles, moving from the application of reliable methodologies into sweeping conclusions, thus violating the strictures of *Daubert* and Federal Rule of Evidence 702; (4) jurors may find it difficult to segregate these roles when weighing testimony and assessing the witness's credibility; and (5) because experts may rely on and disclose hearsay for the purpose of explaining the basis of an expert opinion, there is a risk the witness may relay hearsay when switching to fact testimony.

Id. at 365 (footnote omitted).

phrases indicating that their opinion was based on their training and experience. *See, e.g.*, R. Doc. 121, at 64 ("[Trooper Ryun:] *Through my training and experience*, when a passenger is overly concerned about getting stopped by law enforcement, it's been a good indicator that there may be other things going on inside the vehicle than a simple traffic violation . . . ." (emphasis added)); R. Doc. 122, at 77 ("[Trooper Ryun:] *It's my opinion* that if you were going to purchase a motorcycle to drive it back, you would come with the items that you already possessed to make that trip, such as a motorcycle helmet or leather for riding in cold or inclement conditions." (emphasis added)); *id.* at 203 ("[Question to Officer Primm:] Q. Now, *based on your training and experience*, when the defendant had made statements to you like 'I'm not affiliated to that vehicle,' what did that make you believe? [Officer Primm:] A. I believed he was attempting to conceal the information that he had and he was omitting the truth." (emphasis added) (spacing altered)); *id.* at 160 ("[Question to Trooper McGinnis:] Q. And *based on your training and experience*, could you explain to the jury where you've seen these markings before? [Trooper McGinnis:] A. That is branding that cartels will often put on packaging to signify either who it was coming from or where it's going when it's being shipped out." (emphasis added) (spacing altered)). Moreover, the court's jury instructions told jurors that "[i]n deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it." R. Doc. 88, at 19. The prefatory phrases indicating whether the testimony was based on the witness's training and experience and the court's jury instructions "sufficiently guard[ed] against the risks associated with dual-role testimony." *Overton*, 971 F.3d 756, 763 (8th Cir. 2020) (internal quotation marks omitted). Thus, the district court did not plainly err allowing the law enforcement officers to give dual-witness testimony.

D. *The Court's Comments*

Alexander's last argument is that the district court made improper comments during the trial. "This [c]ourt reviews the district court's trial management for an abuse of discretion." *United States v. Williams*, 720 F.3d 674, 692 (8th Cir. 2013). "Trial judges have wide latitude in conducting their trials . . . ." *Harrington v. Iowa*,

109 F.3d 1275, 1280 (8th Cir. 1997). "Reversal is warranted where 'the court's comments throughout a trial are one-sided and interfere with a defendant's case to such an extent that the defendant is deprived of the right to a fair trial.'" *Williams*, 720 F.3d at 694 (quoting *United States v. Warfield*, 97 F.3d 1014, 1027 (8th Cir. 1996)).

The court did interject at multiple points in the trial, but those interjections were aimed at improving the trial's pace, clarifying witnesses' answers, and stopping redundant questions. *See, e.g.*, R. Doc. 122, at 54–55 ("[District Court:] I think he just said it was the totality of the circumstances. [Alexander's counsel:] That he thought it was implausible. [District Court:] Yeah. [Alexander's counsel:] The question I'm asking is whether or not he determined that it was false. [Witness answers clarified question]." (spacing altered)); R. Doc. 123, at 31 ("[District Court to Alexander:] Was that your testimony? That he was going to use tools to dismantle an ATV? [Alexander answers question]"); *id.* at 44 ("[District Court to Alexander:] Hold on. Listen closely to the questions. If you answer those questions, your attorney will give you a chance to redirect or ask you follow-up questions. . . . Counsel, I'm sorry, you were standing. Is there something else you'd like to say?"). The district court did not abuse its "broad discretion to conduct the trial in an orderly and efficient manner." *United States v. Webber*, 255 F.3d 523, 526 (8th Cir. 2001).

Further, the court's comments were not "one-sided" because some of the comments helped Alexander. *Williams*, 720 F.3d at 694. First, the court allowed Alexander to elaborate his answer to a question posed by the government during cross-examination. R. Doc. 123, at 80 ("[District Court:] Hold on, hold on, hold on. Stop. [Alexander] does get to answer—as your co-counsel has pointed out in my rules of trial, he does get an answer beyond 'yes.'"). Second, the court cut short the government's question about Alexander's knowledge of the plane tickets to California and who bought them. Alexander had already answered the question and the court jumped in saying "[h]old on, hold on. Stop, stop. [Alexander] is speculating . . . . Is that fair? [Gay] could have used miles; is that what you're saying? . . .

[Alexander:] Correct . . . . [Gay] purchased the tickets. [District Court:] Let's move on. We're kind of getting in a rabbit hole here." *Id.* at 34.

At one point during the trial, the court spoke extensively with Alexander's counsel about why it kept interjecting. In the discussion, Alexander's counsel expressed concern that "to the extent that you ask [Trooper Ryun], 'Is this what you said,' what the jury is doing is they're hearing you talking to him during my cross-examination and I'm concerned that it's giving them the impression that you aren't buying what I'm selling." R. Doc. 122, at 61. The court responded, "Use appropriate questions. If they're eliciting information from this witness, you're not going to hear from me; if they misstate or tend to confuse anybody, you're going to hear from me. That's our deal. That's the best I can do. I hope I don't have to interrupt you again." *Id.* at 62. Some of the district court's interruptions cut in Alexander's favor, and others cut against him. We find no error in the district court's interjections that were aimed at improving the trial's pace, clarifying the witnesses' answers, and stopping redundant questions.

Contrary to Alexander's arguments, this case is unlike *United States v. Singer*, 710 F.2d 431 (8th Cir. 1983) (en banc), or *United States v. Bland*, 697 F.2d 262 (8th Cir. 1983). In *Singer*, the district court's comments were mostly helpful to the government. *Singer*, 710 F.2d at 436. As discussed, here the district court's comments equally cut both ways. And in *Bland*, the court engaged in lengthy questioning of the defendant. *Bland*, 697 F.2d at 264–65. But here, the district court did not engage in lengthy questioning of Alexander. When the district court asked questions, it did so "to clarify ambiguities" and not to "assume the mantle of an advocate and take over [examination of a witness] for the government." *Id.* at 265. Here, the district court did not "assume a prosecutorial role in the trial, a role which destroyed fair process for the accused." *Id.* at 266.

Finally, the district court and Alexander's counsel had another prolonged discussion during which the court threatened to bar Alexander's lead attorney from giving the closing argument. This would have required Alexander's other attorney

to give it instead. Before this discussion, Alexander's lead counsel tried to ask a witness a question about Gay's exculpatory statement. The district court had already decided that Gay's statement could not be discussed during the trial in a ruling on a motion in limine and in an earlier sidebar. During the discussion the court said:

> That's the exact question that we dealt with at a sidebar, and I thought you said you were done with that question . . . then you came back and asked the same exact question. I'm concerned about that . . . . There's been times when lawyers, I don't feel like they're following my direction . . . . If you don't follow the rules and you don't live to what you agreed to, [your co-counsel may be giving the closing argument].

R. Doc. 122, at 96–97. The district court did not err explaining the potential consequences of counsel's disregard for the court's rulings.

III. *Conclusion*

The district court did not err in its evidentiary rulings nor in its trial management. Accordingly, we affirm.
