

United States Court of Appeals
For the Eighth Circuit

No. 24-3333

United States of America

Plaintiff - Appellee

v.

Freddie Gladney, III, also known as Bankroll Freddie, also known as Dee Dee

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: January 16, 2026
Filed: August 28, 2026

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.

KELLY, Circuit Judge.

Freddie Gladney, III, was convicted after trial on multiple drug and firearm related counts and was acquitted of others. He appeals, challenging the district

court's¹ denial of his motion to dismiss the indictment, several evidentiary rulings at trial, and the procedural and substantive reasonableness of his sentence.

I.

From approximately April to June 2021, the FBI intercepted several thousand phone calls from two target phones. Some of the calls involved Gladney discussing the sale and purchase of marijuana and firearms with others.

On April 14, 2022, Gladney was pulled over for speeding. When the officer approached, he “immediately detected a strong odor of marijuana coming from the vehicle.” The officer asked Gladney to get out of the truck. Gladney complied, but he then turned and climbed over the center console toward the passenger side and began reaching around. In response, the officer went to the driver's side, climbed in, and with the help of an arriving officer, pulled Gladney out of the truck. Gladney was arrested and placed in the back seat of the officer's patrol car. Officers searched the truck and found a Micro Draco pistol, a 9mm privately made firearm, 7 magazines, 21.4 pounds of marijuana, 171 grams of promethazine with codeine, and cash. The next day, the officer searched his patrol car, where he found a Glock switch under the back seat.

On April 18, 2022, Gladney was arrested on a federal criminal complaint, had an initial appearance, and was detained. On May 3, 2022, an indictment was filed charging Gladney with three counts related to the possession of firearms and marijuana. Gladney was arraigned on May 18, 2022, and released on conditions that same day.

On November 1, 2022, the government indicted Gladney and 34 co-defendants in the instant case. Gladney was charged in ten of the counts and was

¹The Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas.

arraigned on November 14, 2022. On November 9, 2022, the government moved to dismiss the May 3 indictment, stating that the events of April 14, 2022, which formed the basis of the charges in the May 3 indictment, were part of the drug conspiracy charged in the new multi-defendant indictment. The court granted the motion the next day.

Gladney went to trial, and the jury convicted him on the following: conspiracy to distribute or possess with intent to distribute less than 50 kilograms of marijuana, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) (Count 1); possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(D) (Count 15); possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A) and (c)(1)(B)(ii) (Count 16); and use of a communications facility in furtherance of a drug trafficking crime, in violation of 21 U.S.C. §§ 843(b) and 846 (Count 32). He was acquitted of the remaining counts, including Count 17, which charged him with possession of a machinegun, in violation of 18 U.S.C. §§ 922(o) and 924(a)(2).

At sentencing, the district court imposed a 60-month term of imprisonment on Counts 1 and 15, and 48 months on Count 32 to run concurrently, and a 90-month term on Count 16 to run consecutively to all other sentences, for a total sentence of 150 months. Gladney appeals.

II.

Gladney argues the district court erred in denying his motion to dismiss the November 1 indictment based on violations of the Speedy Trial Act and the Sixth Amendment. “When a district court denies a motion to dismiss on Speedy Trial Act grounds, we review its legal conclusions *de novo* and its ultimate Speedy Trial Act ruling for an abuse of discretion. A district court’s finding that a continuance would best serve the ends of justice is a factual determination that we review for clear error.” United States v. Wilson, 122 F.4th 317, 323 (8th Cir. 2024) (citing United States v. Grady, 88 F.4th 1246, 1255 (8th Cir. 2023)). “Sixth Amendment challenges

are reviewed separately from the Speedy Trial Act. We review the district court's findings of fact on whether a defendant's right to a speedy trial was violated for clear error but review its legal conclusions de novo." United States v. Hunt, 169 F.4th 766, 771 (8th Cir. 2026) (citations omitted).

First, Gladney contends that more than 30 days lapsed between the date of his arrest and the date the November 1 indictment was filed, in violation of the Speedy Trial Act. See 18 U.S.C. § 3161(b) ("Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.").

Gladney was initially arrested on April 18 on a criminal complaint. Fifteen days lapsed before the government filed the May 3 indictment. However, "when the government drops a complaint but then later brings a new complaint or indictment on the same charge,² the 30-day period runs from the second complaint or indictment." United States v. Williams, 408 F.3d 1073, 1076 (8th Cir. 2005) (emphasis and citation omitted). Thus, the time between Gladney's arrest and the dismissal of the complaint is not counted against the 30 days, "nor is the time between the dismissal [of the complaint] and the [May 3 indictment]." Id.

The May 3 indictment then remained pending until the government filed the November 1 indictment. See Williams, 408 F.3d at 1077 ("In our circuit, where the indictment is dismissed on the government's motion, the time limitation is merely tolled during the period when no indictment is outstanding. Thus, the time between the arrest and the first indictment, as well as the time between the dismissal and the subsequent indictment or complaint, are counted for speedy trial purposes.") (citation modified). Because the May 3 indictment was dismissed only after the November 1 indictment was filed, no additional time ran on the 30-day clock. See

²The criminal complaint alleged one violation of 18 U.S.C. § 924(c). This allegation was carried over as Count 16 in the May 3 indictment, which also included two drug charges.

id. The district court did not err in finding no violation of Gladney’s statutory right to a timely indictment.

Under the Speedy Trial Act, a defendant also must be brought to trial within 70 days of his indictment or first appearance, whichever is later, with certain periods deemed excludable under 18 U.S.C. § 3161(h). Zedner v. United States, 547 U.S. 489, 497 (2006); 18 U.S.C. § 3161(c)(1). Gladney next asserts that more than 70 non-excludable days passed before his trial commenced on April 9, 2024.

Trial was initially set for December 19, 2022. But beginning on November 15, 2022, the day after Gladney’s arraignment, several of his co-defendants filed motions to continue the trial. On December 13, 2022, the district court granted the motions, finding the “ends of justice” warranted a continuance. See id. § 3161(h)(7)(A) (excluding from the Speedy Trial Act clock “[a]ny period of delay resulting from a continuance granted by any judge [] at the request of the defendant or his counsel [] if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial”).

On appeal, Gladney asserts that none of the delay beyond the original trial date is properly excluded from the Speedy Trial calculation because the district court’s ends-of-justice finding was lacking.³ See id. The district court’s December 13 order continued trial to provide “reasonable time necessary for effective preparation for trial and inherent development of any and all proper defenses.”

³Gladney also contends that several days lapsed under the Speedy Trial Act before the November 1 indictment was filed, but he concedes this new indictment “reset the Speedy Trial clock.” Instead, he argues the government achieved this result “improperly” “with a strategic use of multiple indictments” in order to “circumvent[] the Speedy Trial Act’s protections.” But Gladney’s assertions are conclusory, and we decline to address them.

Gladney contends these are not sufficiently specific findings to justify the continuance and to meet the demands of the Speedy Trial Act.

We agree that the Speedy Trial Act requires “express findings” that a continuance would serve the ends-of-justice and outweigh other relevant interests before the delay may be excluded from the 70-day clock. Zedner, 547 U.S. at 506. But even if we assume the December 13 order did not meet this standard, the analysis does not end there. As the Supreme Court has stated:

Although the Act is clear that the findings must be made, if only in the judge’s mind, before granting the continuance (the continuance can only be “granted on the basis of the court’s findings”), the Act is ambiguous on precisely when those findings must be “set forth, in the record of the case.” However this ambiguity is resolved, at the very least the Act implies that those findings must be put on the record by the time a district court rules on a defendant’s motion to dismiss under § 3162(a)(2).

Id. at 506–07 (citation modified).

Here, the district court issued detailed findings when it ruled on Gladney’s motion to dismiss the indictment on Speedy Trial grounds. In the April 4, 2024 order denying the motion, the court explained,

At the time the Court granted the motions for continuance, trial was scheduled for December 19, 2022. As stated, nine defendants requested a continuance. Specifically, Defendants Marcus Hughes and Deandre Gates had newly appointed attorneys who stated that they would not have adequate time to prepare for trial. Hughes and his attorney had not even had an opportunity to meet. (ECF No. 289, 202). Defendants L.C. Davis, Jennifer Lenair, and Hershel Jones had only been indicted since November 1, 2022, and were arraigned on November 10, 2022. Given the fact that all 35 defendants had not even made an initial appearance for plea and arraignment, the defendants’ need for a reasonable amount of time to meet with counsel, to review discovery, and to adequately prepare for trial, the Court found that it would have been a miscarriage

of justice to deny the defendants' motions to continue. The evidentiary and procedural complexity of this large trial certainly justified the continuance pursuant to 18 U.S.C. § 3161(h)(7)(A).

This order reflected the reasons the co-defendants offered in support of their motions to continue, and Gladney does not contend these reasons are not of the type a court may consider in its ends-of-justice findings. See 18 U.S.C. § 3161(h)(7)(B)(ii), (iv) (identifying “factors, among others, which a judge shall consider in determining whether to grant a[n ends-of-justice] continuance”). Because the district court adequately “set[] forth . . . its reasons for finding that the ends of justice” were served by the continuance, and did so by the time it ruled on Gladney’s motion to dismiss, the period of delay resulting from that continuance was properly excluded from the Speedy Trial clock calculation. See id. § 3161(h)(7)(A).

Finally, Gladney argues that the 14-month delay from the time of his November arrest to the filing of his motion to dismiss violated his Sixth Amendment right to speedy trial. To assess this claim, we consider the four factors identified in Barker v. Wingo, 407 U.S. 514, 530 (1972): “[1] the length of the delay, [2] the reason for the delay, [3] whether the defendant asserted the right to a speedy trial, and [4] whether the defendant has suffered any prejudice.” United States v. Maloney, 102 F.4th 904, 917 (8th Cir. 2024) (quotation omitted).

Adopting Gladney’s calculation for this purpose, we agree that a 14-month delay is presumptively prejudicial. See United States v. Johnson, 990 F.3d 661, 670 (8th Cir. 2021) (“Johnson’s nearly 14-month delay was presumptively prejudicial.”). This factor weighs in favor of Gladney’s challenge.

Turning to the reason for the delay, the district court found the ends-of-justice warranted a continuance because Gladney’s co-defendants needed time to prepare for a complex, multi-defendant trial. Gladney offers no argument that these are not legitimate reasons or that his co-defendants did not need the additional time to

adequately prepare.⁴ See, e.g., United States v. Shepard, 462 F.3d 847, 864 (8th Cir. 2006) (finding “the time it took to dispose of” the “over 50” pretrial motions the co-defendants filed did not result in “an unreasonable intrusion on [defendant’s] due process rights”). As to the third factor, Gladney asserted his right to a speedy trial but not until January 19, 2024, when he filed his motion to dismiss. Cf. Johnson, 990 F.3d at 671 (concluding the defendant “only weakly asserted her speedy trial right” where she failed to oppose any of the four granted continuances before filing her motion to dismiss). And it was not until January 15, 2024, that he objected to any of the motions to continue that had been filed up to that date. These two factors weigh against a constitutional speedy trial violation.

Last, we look to prejudice. “[W]e assess the prejudice to the defendant in light of the following three interests: ‘(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.’” Johnson, 990 F.3d at 671 (citing Barker, 407 U.S. at 532). Gladney posits that with the passage of time comes the deterioration of memories and evidence. As a general proposition, this may be true, but Gladney fails to explain how any deterioration affected his ability to prepare his defense or to confront the government’s evidence against him in this case. He also describes anxiety and distress he experienced due to the delay, but we have explained that this “alone is insufficient to demonstrate prejudice.” See id. And any impact on his professional career is unfortunate but similarly insufficient to establish prejudice in this context. Cf. id. (concluding that “damage to [defendant’s] business and humiliation for her children are unrelated to the delay and more attributable to the indictment”).

The district court did not err in denying Gladney’s motion to dismiss the indictment on statutory or constitutional speedy trial grounds.

⁴Gladney reasserts his assignment of blame to the government for delay in filing the operative indictment, but again, we decline to address this conclusory assertion.

III.

Over his objection, the district court admitted evidence at trial of lyrics from Gladney’s rap music.⁵ “We review the evidentiary rulings of a district court only for abuses of discretion, and will reverse only when an improper evidentiary ruling affects the substantial rights of the defendant or when we believe that the error has had more than a slight influence on the verdict.” United States v. Allen, 43 F.4th 901, 909 (8th Cir. 2022) (quoting United States v. Yarrington, 634 F.3d 440, 447 (8th Cir. 2011)).

The disputed lyrics were in four short clips⁶ from longer videos of Gladney’s performances. On appeal, Gladney argues the lyrics were not admissible pursuant to Federal Rule of Evidence 404(b). But the district court did not admit the lyrics as evidence of “[an]other crime, wrong, or act.” Fed. R. Evid. 404(b). Rather, the district court found the evidence was relevant to Gladney’s knowledge of terms used in the drug trade and was not inadmissible hearsay, and Gladney does not challenge that ruling on appeal. See Fed. R. Evid. 801(d)(2)(A) (a statement “offered against an opposing party” that “was made by the party in an individual capacity” is not hearsay). Instead, he contends the evidence was inadmissible because it was more prejudicial than probative. See Fed. R. Evid. 403.

Gladney was charged with multiple drug and firearm related offenses, including possession of a machinegun. Here, the lyrics introduced were limited to those lyrics relevant to Gladney’s understanding of words he also used in conversations obtained by wiretap—conversations the government alleged were

⁵Gladney is a musician who performed professionally as “Bankroll Freddie.”

⁶The clips the government introduced were of varying lengths: 3 seconds, 4 seconds, 13 seconds, and 10 seconds respectively. Gladney challenges only the admission of the lyrics contained in the video clips.

drug and firearm-related.⁷ In this way, the lyrics were probative to show Gladney’s knowledge of terminology that was alleged to be associated with the sale of marijuana. See United States v. Franklin, 177 F.4th 915, 929 (8th Cir. 2026) (holding rap lyrics were relevant and probative to “show[] [defendants] knew the lingo, they knew about selling drugs, they knew about guns”). Similarly, the lyrics that included “Glock” and “switch” were relevant to his knowledge that a Glock switch would modify a pistol to be fully automatic.

We recognize that some lyrics, rap included, may be prejudicial—sometimes unfairly so. See Fed. R. Evid. 403; see, e.g., United States v. Moore, 639 F.3d 443, 448 (8th Cir. 2011) (identifying a “danger of unfair prejudice flowing from the lyrics used by [the defendant] and the other rappers, which were replete with vulgar, inflammatory, prejudicial language, most of which was irrelevant to whether [the defendant] was involved in a drug distribution conspiracy”); United States v. Holt, 160 F.4th 945, 949 (8th Cir. 2025) (same). But here, the lyrics introduced into evidence were limited to specific lyrics that included words relevant to the charged offenses. No full songs were introduced, and Gladney points to no irrelevant or inflammatory lyrics that were included in the clips.

In addition, the district court permitted Gladney’s expert, law professor Andre Cummings, to testify about the role of drug and firearm terminology in rap music. Cummings explained that to sell records, hip-hop artists adopt an “artist persona.” In particular, he described a subgenre of gangster rap called “trap rap,” which focuses on drug use, drug trafficking, and violence. To be successful, he said, a trap rapper must perform as if he is engaged in the activity he raps about. For this reason, if a trap rapper did not use and understand the relevant terminology—such as “bow” or Glock switch—he “would be laughed off stage.” According to Cummings, “[a]utobiographical rapping is rare.” With this testimony, the jury was provided an alternative explanation for why Gladney used certain words in his music. And it was

⁷For example, the lyrics included “bow” and “448,” which the jury heard both meant “pound.” The lyrics also included the phrase “switch on the Glock change this b**** to a fully.”

for the jury to assess whether Gladney’s use of those words was more likely a reflection of his personal lifestyle or of his artistic expression.⁸

On this record, the lyrics introduced at trial were not more prejudicial than probative, and the district court did not abuse its discretion in allowing the jury to hear the limited lyrics that were introduced.⁹

IV.

Gladney challenges his sentence on several grounds. When we review a district court’s sentencing decision, we do so “in two steps, first reviewing for significant procedural error, and second, if there is no significant procedural error, we review for substantive reasonableness.” United States v. Rooney, 63 F.4th 1160, 1170 (8th Cir. 2023) (quoting United States v. Ayres, 929 F.3d 581, 582–83 (8th Cir. 2019)). “We review a district court’s factual findings for clear error and its legal conclusions regarding the Guidelines de novo.” United States v. Zambrano, 971 F.3d 774, 780 (8th Cir. 2020) (first citing United States v. Guzman, 926 F.3d 991, 1000 (8th Cir. 2019) (role enhancement); and then citing United States v. Sandoval-Sianuqui, 632 F.3d 438, 442 (8th Cir. 2011) (obstruction-of-justice enhancement)). We review a sentence’s substantive reasonableness for abuse of discretion. Id. at 783.

⁸Gladney also asserts that because his expert was not permitted to testify about the “historical evolution of African American music,” the jury could “misconstrue artistic expression as criminal admission.” But Cummings testified about the artistic expression of rappers who adopt artistic personas, and Gladney does not further articulate why the evolution of the art form was important to the jury’s understanding of this testimony.

⁹Gladney also argues that the use of his rap lyrics as evidence against him at trial violated his First Amendment rights. But “[t]he First Amendment [] does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.” Wisconsin v. Mitchell, 508 U.S. 476, 487–89 (1993).

A.

Relevant to his first challenge, Gladney was convicted on Count 16 of possessing a firearm—a 9mm privately made firearm¹⁰—in furtherance of a drug trafficking offense on April 14, 2022.¹¹ But in a special interrogatory, the jury found Gladney did not possess a Glock switch—a device that would convert the 9mm firearm into a machinegun—along with the firearm. Thus, for Count 16, the jury did not find that the 9mm firearm qualified as a machinegun. And Gladney was also acquitted on Count 17, which charged him with possession of a machinegun on that same date.

On appeal, Gladney argues the district court improperly relied on acquitted conduct at sentencing—not to calculate his Guidelines range, but in its § 3553(a) analysis. Our review of the record, however, shows that the district court did not rely on acquitted conduct. In determining that an upward variance was appropriate, the court cited evidence that the back plate was missing—and that a switch had been removed—from the 9mm firearm found in Gladney’s truck on April 14. And it then found that, even if Gladney was not in possession of a Glock switch on April 14—as the jury found he was not—the 9mm firearm was “equipped and prepared” to be converted to a fully automatic machinegun by way of a Glock switch at the time Gladney possessed it.

In short, the district court did not rely on a finding that Gladney possessed a Glock switch on the day of his arrest, but on a finding that the firearm he *did* possess was ready and able to accept a Glock switch and, thus, be converted to a fully automatic firearm. The jury was not asked whether the firearm could readily be

¹⁰The jury heard testimony that this firearm was a “Glock clone.”

¹¹The jury found Gladney possessed two firearms in furtherance of a drug trafficking offense on Count 16, but this is the only firearm relevant to Gladney’s argument here.

converted to fully automatic *if* it had a Glock switch and thus made no finding on this question. The district court did not rely on acquitted conduct when determining Gladney's sentence.

B.

Next, Gladney challenges the calculation of his Guidelines range. The government bears the burden of proving a sentencing enhancement by a preponderance of the evidence, Zambrano, 971 F.3d at 780, and it is a defendant's burden to prove they are entitled to a reduction in their offense level, United States v. Cooper, 998 F.3d 806, 810 (8th Cir. 2021).

The district court assessed a 4-level enhancement for Gladney's leadership role in the offense conduct. See USSG § 3B1.1(a) ("If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase [the offense level] by 4 levels."). First, Gladney asserts he was involved in a conspiracy to distribute marijuana with only one other person. But the evidence presented at trial, including witness testimony and wiretap recordings, showed that Gladney's criminal activity involved at least five named and unknown co-conspirators. Gladney does not explain why the district court could not rely on this evidence, and we see no error in the court's decision to do so.

Next, Gladney contends he was not an organizer or leader in the criminal activity. To determine a defendant's role, the district court may consider factors such as "the exercise of decision-making authority, the nature of participation in the commission of the offense . . . the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others." USSG § 3B1.1 comment. (n.4). Here, the evidence showed that Gladney offered advice and instruction on drug trafficking to at least one other participant, exerted influence over the purchase, and price, of controlled substances, and directed a co-conspirator to remove contraband from his house. Given this evidence, the district court did not err in applying the enhancement. See

United States v. Brown Bull, 138 F.4th 1083, 1089 (8th Cir. 2025) (“For [a role] enhancement to apply, the defendant need organize or lead only one other participant.”) (internal quotation omitted).

The district court also assessed a 2-level enhancement for obstruction of justice. See USSG § 3C1.1 (“If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant’s offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.”). The district court relied on a recorded call from Gladney to his father and co-conspirator. In that call, Gladney asked his father if he had gotten “everything out of” the house, including scales, “any guns, anything,” and told him to “get everything else out that house before they go search.” Gladney does not contest the fact of this conversation but asserts it does not amount to obstruction of justice. Directing another person to conceal or destroy material evidence is “the type of conduct” that qualifies under this Guideline provision, and we see no error in its application here. See USSG § 3C1.1, comment. (n.4); United States v. Still, 6 F.4th 812, 818–19 (8th Cir. 2021) (affirming obstruction of justice enhancement where defendant attempted to destroy or conceal evidence by instructing another “to get rid of” a firearm).

Next, Gladney asserts the district court erred in not reducing his offense level for acceptance of responsibility. The Guidelines provide for a reduction in the offense level for a defendant who “clearly demonstrates acceptance of responsibility for his offense.” USSG § 3E1.1. Gladney’s decision to go to trial does not automatically preclude his eligibility for the reduction, but the reduction “is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse.” United States v. Quinn, 131 F.4th 846, 863 (8th Cir. 2025) (quoting USSG § 3E1.1, comment. (n.2)). The district court acknowledged defense counsel’s closing argument, during which he conceded some

of the conduct alleged. But Gladney contested nearly every charged count,¹² see United States v. Rivera-Ordaz, 554 F.3d 724, 726 (8th Cir. 2009), and even after trial, Gladney did not “admit guilt” or “express remorse” for the counts of convictions, see USSG § 3E1.1, comment. (n.2). “A district court’s factual determination about whether the defendant accepted responsibility is entitled to great deference, and we will reverse it only if it is so clearly erroneous as to be without foundation.” United States v. Smith, 665 F.3d 951, 957 (8th Cir. 2011) (quoting United States v. Wallenfang, 568 F.3d 649, 661 (8th Cir. 2009)). We see no grounds to disturb the district court’s determination here.

Finally, Gladney argues his sentence is substantively unreasonable. “We review the substantive reasonableness of a sentence ‘under a highly deferential abuse-of-discretion standard.’” United States v. Madrigal, 136 F.4th 766, 777 (8th Cir. 2025) (quoting United States v. Jones, 71 F.4th 1083, 1086 (8th Cir. 2023)). Gladney contends the district court sentenced him more harshly than his co-defendants, who were engaged in similar activity. But the court addressed this argument at sentencing, explaining that Gladney “set[] himself apart” from the others due to the nature and extent of his own criminal conduct. And we otherwise discern no abuse of discretion in how the district court weighed the relevant sentencing factors.

V.

We affirm.

¹²In closing argument, defense counsel asked the jury to find Gladney guilty of “possession of marijuana” and “using a phone,” but told the jury that the government “didn’t prove anything else to you.” We note that Gladney was not charged with simple possession of controlled substances.