

File Name: 26a0287p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NASIR LEWIS,

Defendant - Appellant.

No. 25-1508

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:22-cr-20519-7—Laurie J. Michelson, District Judge.

Argued: July 21, 2026

Decided and Filed: October 21, 2026

Before: SILER, DAVIS, and RITZ, Circuit Judges.

COUNSEL

ARGUED: Melissa M. Salinas, Isabelle Tegtmeyer, UNIVERSITY OF MICHIGAN, Ann Arbor, Michigan, for Appellant. Sarah Alsaden, UNITED STATES ATTORNEY’S OFFICE, Detroit, Michigan, for Appellee. **ON BRIEF:** Melissa M. Salinas, Isabelle Tegtmeyer, Daniel Kaylor, UNIVERSITY OF MICHIGAN, Ann Arbor, Michigan, for Appellant. Sarah Alsaden, UNITED STATES ATTORNEY’S OFFICE, Detroit, Michigan, for Appellee.

OPINION

DAVIS, Circuit Judge. A jury convicted Nasir Lewis of aiding and abetting a kidnapping perpetrated to gain information about the shooting and carjacking of his fellow gang member, Cortez Blake. Taliyah Jackson, the victim of the kidnapping, was Blake’s childhood friend and present in the car with him when he was shot. But Blake’s gang came to suspect that Jackson,

far from a mere bystander, had a hand in setting Blake up. So members of the gang abducted her, peppered her with questions about her involvement, and physically assaulted her. Someone shared a video recording of the assault—which included a scene of Lewis hovering over and nudging Jackson with a rifle—in an Instagram group chat used by some of the gang members. Police discovered the incriminating group chat while investigating Blake for firearms offenses, and the evidence therein proved vital to subsequent prosecutions.

Lewis and six others were indicted for their roles in the kidnapping. Three of them, including Lewis, proceeded to trial. Before trial, the district court denied these defendants' motions to suppress evidence seized under what they said were constitutionally infirm search warrants, and to exclude hearsay statements and improper character evidence. A jury then convicted Lewis of aiding and abetting the kidnapping. On appeal, Lewis challenges the district court's denial of his motion to suppress, the sufficiency of the evidence against him, and the jury instructions. Each challenge lacks merit, so we AFFIRM.

I.

A. Factual Background

1. The Kidnapping

In mid-November 2021, members of a rival gang chased Cortez Blake—of the violent street gang 1125—and his childhood friend, Taliyah Jackson, out of a rental car that Jackson had driven into West Detroit. Blake took a bullet during the escape, so he and Jackson caught a ride to the hospital, where he received treatment.

While Blake convalesced, 1125 gang members plotted revenge in an Instagram group chat. And, unbeknownst to Jackson, the gang suspected that she had helped orchestrate the carjacking. So, under the guise of providing her a ride home, Blake's compatriots (at least one of whom was armed) drove Jackson to a vacant lot for questioning. They subsequently relocated her, accompanied by additional armed men, to Blake's house, where the interrogation continued.

According to cell site location data, Lewis likely arrived at Blake's house shortly thereafter. And he did more than loiter about. Video captured him hovering over Jackson with an assault rifle as two women attacked her. And he later jabbed Jackson with his rifle.

All told, the interrogation spanned over seven hours and left Jackson bruised and injured.

2. Instagram Chat and Video

Maijah Greene, one of Jackson's assailants, brought her minor sister to Blake's home for the interrogation, and that sister video-recorded part of Jackson's assault. In the aftermath, someone posted a clip of the video in the gang's Instagram group chat. The chat erupted. One chat member identified Lewis in the video, and another asked why they were assaulting Jackson and if Lewis was "poking her with [his] gun." (Instagram Chat, R. 442, PageID 5196). Lewis chimed in, asking, "Who recorded th[a]t sh[*]t?" before stating, "That is ki[d]napping," questioning "Y'all stupid?" and threatening to "beat th[a]t lil girl [*]ss who recorded." (*Id.* at PageID 5197–98). Blake messaged that he had called Greene, who instructed her sister to delete the video. And at another gang member's urging, the chat members—including Lewis—left the chat.

3. Investigation and Arrest

In January 2022, state and federal law enforcement opened an investigation into the 1125 gang's unlawful possession of firearms. During the investigation, law enforcement sought and obtained a total of six state and federal search warrants. The first two warrants (the "state warrants") authorized searches of Blake's Instagram account. Four subsequent warrants (the "federal warrants") targeted an array of individuals' social media accounts, including Lewis's.

January 2022 State Warrant. A Michigan judge approved the first state warrant in January 2022. The warrant ordered Facebook to provide eight categories of information from Blake's Instagram account, including contact information and all messages, photos, and videos sent, posted, and received by Blake from October 1, 2021, through January 25, 2022.

March 2022 State Warrant. In early March 2022, a state court judge approved a second warrant for Blake's Instagram account. Like the first, the second state warrant ordered Facebook

to provide eight categories of information from Blake's account and had a limited timeframe: January 25, 2022, through March 3, 2022.

April 2022 Federal Warrant. The first federal search warrant—issued in April 2022—approved the search of the Instagram accounts of Blake, co-defendant Semaj Ayers, co-defendant Armond Williams, co-defendant Karamoh Turner (“Turner”), non-defendant Ramone Turner (“Ramone”), and a sixth individual. Following a typical search-and-seizure process, the warrant authorized the government to first search information associated with the targeted accounts. Then, the warrant outlined the information the government planned to seize, focusing on the fruits, contraband, evidence, and instrumentalities of violations of certain federal firearms laws. And the warrant was time-limited to the period covering April 1, 2021, through March 31, 2022.

Pursuant to this warrant, an agent reviewed Ramone's account and discovered the 1125 Instagram group chat containing discussion of Jackson's kidnapping. This prompted law enforcement to seek additional federal warrants.

First August 2022 Federal Warrant. The first of the two federal warrants issued in August 2022 targeted the Google accounts of three 1125 members: Ayers, Turner, and Williams. The warrant ordered Google to disclose business records and subscriber information, information about devices associated with the accounts, user activity and contacts, location history, and web and app activity. It permitted the seizure of information relating to Jackson's kidnapping and was limited to the two-day window of the kidnapping: November 14 and 15, 2021.

Second August 2022 Federal Warrant. The second federal warrant issued in August 2022 also focused on the kidnapping, and it targeted seventeen Instagram accounts. This was the only warrant targeting Lewis. It authorized the search of the listed Instagram accounts, and, like the April 2022 federal warrant, it listed several categories of information to be seized. This included contact information, all content (including images, stories, posts, tags, and direct and group messages), interactions with other accounts, location information, and searches performed. It authorized the seizure of the fruits, contraband, evidence, and instrumentalities of a violation of the federal kidnapping statute and various types of information and communications related to

Jackson's kidnapping and the carjacking. The warrant was limited to a one-week timeframe from November 14, 2021, to November 21, 2021.

The affidavit for this second August 2022 warrant followed the same pattern as the affidavits submitted in support of the previous federal warrants, outlining the federal crimes at issue, background on Instagram, and history of the 1125 gang. It also included information about the affiant's training and experience with gangs using Instagram and explained the investigation into the carjacking and kidnapping after discovery of the group chat. The affidavit then described, in detail, the circumstances of the carjacking and kidnapping and provided excerpts from the gang's Instagram group chat, including Lewis's messages.

October 2022 Federal Warrant. In October 2022, a magistrate judge authorized a search warrant for three Instagram accounts. This warrant was nearly identical to the second August 2022 warrant but was submitted to correct spelling errors that prevented Meta from processing some of the accounts. It listed the same categories of information to be seized as the second August 2022 warrant and authorized seizure of the same types of evidence, information, and communications related to the kidnapping and carjacking.

Warrant Related to Kidnapping Video. Several months later, law enforcement received information that Greene's younger sister had filmed Jackson's assault. Law enforcement obtained and executed a search warrant for the sister's phone and recovered the video.

B. Procedural Background

A federal grand jury indicted Lewis and six others on charges of conspiracy to kidnap Jackson, in violation of 18 U.S.C. § 1201(a)(1) and (c), and aiding and abetting a kidnapping, in violation of 18 U.S.C. §§ 2 and 1201(a)(1). Four of the defendants entered plea agreements with the government, while Blake, Lewis, and Turner went to trial.

Before trial, Lewis and his co-defendants sought to exclude several pieces of evidence. First, they moved to exclude "evidence of the '1125' gang" that the government intended to introduce as background evidence and under Federal Rule of Evidence 404(b). (Turner Mot. to Exclude, R. 256, PageID 1906 (citation modified); *see* Lewis Joinder Not., R. 262). Second,

Lewis moved to exclude certain statements that the government intended to introduce under the co-conspirator exception to hearsay under Rule 801(d)(2)(E). He argued that some of the Instagram messages involved “retrospective statements made well after” Jackson was released, so “they were not made during the conspiracy or in furtherance of it” and could not be admitted under the co-conspirator exception. (Lewis Mot. to Exclude, R. 267, PageID 1969). And third, Lewis moved to suppress evidence that he claimed was the fruit of unconstitutional search warrants, including social media evidence, and, alternatively, for a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978). The district court denied Lewis’s motions to suppress evidence obtained from the warrants and to exclude certain hearsay statements. And it granted in part and denied in part the motion to exclude Rule 404(b) evidence. (Order, R. 301, PageID 2182).

Trial took place over six days. After hearing from Jackson and others, the jury acquitted Turner altogether and acquitted Lewis and Blake of conspiracy to kidnap. But the jury found Lewis and Blake guilty of aiding and abetting Jackson’s kidnapping. We now consider Lewis’s appeal.

II.

Search Warrant Challenges. Lewis first argues that the district court erred when it failed to suppress evidence seized pursuant to the federal warrants. But Lewis lacks standing to challenge most of the warrants, as he may not seek to suppress evidence based on an alleged violation of a co-defendant’s Fourth Amendment rights. Nor can he suppress information obtained pursuant to the search of his own account based on the supposed taint of prior warrants that he has no standing to impugn.

A. Standard of Review

When considering an appeal of the denial of a motion to suppress evidence, we apply clear-error review to the district court’s factual findings and de novo review to its legal conclusions. *See United States v. Reed*, 163 F.4th 338, 354 (6th Cir. 2025). The same standard applies to denial of a *Franks* hearing. *See id.* Factual findings are clearly erroneous only if, when reviewing the evidence, we have a “definite and firm conviction” that the district court made a mistake. *Id.* (citation modified). Further, we view the evidence “in a light most

favorable to the Government.” *United States v. Richards*, 164 F.4th 508, 519 (6th Cir. 2026) (citation modified). We will uphold the denial of the motion to suppress if “any reason” supports the district court’s decision. *United States v. Moorehead*, 912 F.3d 963, 966 (6th Cir. 2019) (citation modified).

B. Analysis

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. These rights are “personal” and, as a result, “may not be vicariously asserted.” *Rakas v. Illinois*, 439 U.S. 128, 133–34 (1978) (citation modified). So an individual can only challenge a search if that search “infringe[s]” on “his own” rights. *Byrd v. United States*, 584 U.S. 395, 403 (2018) (citation modified). This occurs when the government illicitly pries into a place where the defendant has a reasonable expectation of privacy. *See United States v. Washington*, 573 F.3d 279, 282–83 (6th Cir. 2009); *see also United States v. King*, 227 F.3d 732, 743 n.1 (6th Cir. 2000) (noting question of Fourth Amendment standing is subsumed by “the substantive issue of whether the defendant had a legitimate expectation of privacy”). A defendant can satisfy that standard by demonstrating “an actual (subjective) expectation of privacy” “that society is prepared to recognize as reasonable.” *United States v. Rogers*, 97 F.4th 1038, 1041–42 (6th Cir. 2024) (citation modified). The “reasonableness” inquiry turns on factors such as the individual’s “proprietary or possessory interest in the place to be searched, his right to exclude others, and whether he was legitimately on the premises.” *Id.* at 1042 (citation modified). And, as those factors suggest, a defendant generally lacks “standing” to move to exclude evidence—even a proverbial smoking gun—obtained through an unconstitutional search of *someone else’s* person or property. *See United States v. Padilla*, 508 U.S. 77, 81–82 (1993) (per curiam) (“Co-conspirators and codefendants have been accorded no special standing.” (citation modified)); *United States v. Leon*, 468 U.S. 897, 910 (1984) (holding that the exclusionary rule only applies when “the prosecution seeks to use the fruits of an illegal search . . . against the victim of police misconduct”).

1. Third-Party Instagram Accounts

As Lewis sees it, the two state warrants that authorized the government to search Blake's social media accounts violated the Fourth Amendment, and, because the federal warrants relied on evidence obtained pursuant to those warrants, the federal warrants also contravened the Fourth Amendment. So the district court should have excluded any evidence acquired pursuant to those warrants as well. But Lewis has no reasonable expectation of privacy in *Blake's* social media accounts, so he has no standing to challenge the propriety of warrants authorizing searches of those accounts.

While technological innovations can bring new issues to Fourth Amendment jurisprudence, the novelty of social media poses no such difficulty here because Blake's accounts are tantamount to any other corporeal belonging. Lewis has "neither a property nor possessory interest" in Blake's bedroom dresser or diary, and he similarly lacks property or possessory interests in Blake's social media accounts. *United States v. Mastromatteo*, 538 F.3d 535, 544 (6th Cir. 2008) (citation modified). Were Lewis an overnight guest in Blake's house, he *might*, nevertheless, hold a reasonable expectation of privacy in, say, the bedroom dresser Blake permitted him to use during his stay. *See, e.g., Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *King*, 227 F.3d at 749 (analyzing whether a defendant was "legitimately on the premises" to help determine the legitimacy of his claimed expectation of privacy). So, analogizing to social media, were Lewis managing Blake's accounts, society *might* recognize Lewis's limited expectation of privacy in those accounts. *See United States v. Zelaya-Veliz*, 94 F.4th 321, 333–34 (4th Cir. 2024) (explaining that most courts to consider the issue "have agreed that . . . social media users have a reasonable expectation of privacy in content that they exclude from public access, such as private messages"). But society does not recognize a free-floating expectation of privacy in a third-party social media account that a person neither operates nor controls. *See Rakas*, 439 U.S. at 133 (holding that the Fourth Amendment applies to "personal rights"). Consonant with society, Lewis also "exhibited [no] subjective expectation of privacy" in Blake's account. *Rogers*, 97 F.4th at 1042. Nor do any objective factors substantiate the reasonableness of such an expectation. Lewis, for instance, did not run Blake's Instagram account. He exercised no editorial authority over it. He did not select the privacy settings. As far as the record is

concerned, he never so much as “liked” a post or left a comment as Blake’s proxy. Accordingly, he cannot vicariously assert Blake’s rights to suppress evidence obtained from searches of the account. *See Byrd*, 584 U.S. at 403; *Rakas*, 439 U.S. at 133–34.

The same logic applies to the April 2022 federal warrant for Ramone, Ayers, Williams, Turner, and Blake’s Instagram accounts; the first August 2022 warrant for the Google accounts associated with Ayers, Turner, and Williams; and the October 2022 federal warrant. Each of these warrants targeted *other people’s* social media or email accounts. Lewis exhibited no subjective expectation of privacy with respect to those accounts and asserts no interests (proprietary, possessory, or privacy) in them. He, therefore, lacks standing to challenge the warrants that authorized the searches of said accounts. *See United States v. Williams*, 354 F.3d 497, 510–11 (6th Cir. 2003) (rejecting argument that evidence should have been suppressed “simply because it [was] the fruit of a violation of [a] co-defendant’s Fourth Amendment rights”); *see also United States v. Noble*, 762 F.3d 509, 526, 529 (6th Cir. 2014) (observing that co-defendants “appear[ed]” to “lack standing to challenge the frisk of” their co-defendant but reversing denial of suppression where government waived standing argument). Nor is he eligible for a *Franks* hearing. *See Mastromatteo*, 538 F.3d at 544 (“Determining that a defendant has Fourth Amendment standing is a prerequisite to granting a motion for a *Franks* hearing.”).

Lewis, nonetheless, insists that he can challenge the Instagram chat messages because he had a legitimate expectation of privacy in them. He likens his situation to the circumstances addressed in *United States v. Warshak*, 631 F.3d 266 (6th Cir. 2010), and *King*, 227 F.3d at 749–50. But neither case nudges us to his side. *Warshak* held that a defendant had a legitimate expectation of privacy in *his own* email account. *See* 631 F.3d at 288. Lewis, meanwhile, contests the introduction of a chat obtained from *someone else’s* (Ramone’s) Instagram account. Analogizing to a familiar, if anachronistic example, imagine if Lewis sent Ramone a letter, which Ramone received and kept in his house. If police seized the letter pursuant to a warrant authorizing a sweep of Ramone’s house, Lewis would have no Fourth Amendment standing to contest the introduction of the letter in court. *See United States v. King*, 55 F.3d 1193, 1196 (6th Cir. 1995) (“[A] sender’s expectation of privacy [in a letter] ordinarily terminates upon delivery.”). The same applies to the chat messages recovered from Ramone’s Instagram account.

Nor does *King* lend Lewis any aid. The defendant in *King* lived in a two-family dwelling with a basement to which he and other tenants had access and the right to exclude non-tenants. *See* 227 F.3d at 749. So, unlike Lewis’s relationship to Ramone’s account, King had a property interest in the place to be searched. *Id.* Moreover, the group chat hardly resembles the shared basement. Rather, a tenant’s interest in a shared basement parallels an Instagram account holder’s interest in the account itself. The group chat discussion, on the other hand, is more akin to evidence discovered in the basement. *See id.* at 736. So we reject the analogy.

Still, Lewis says he is “not claim[ing] a privacy interest in someone else’s data” but instead that he has a “privacy interest in an online *space*” he shared with a “defined set of people” and in which he took pains to maintain his privacy. (Appellant’s Br., ECF 42, 20–21). But, again, the chat is better characterized as evidence within a space than a space *qua* space. After all, the warrants did not seek to search the group chat. They sought to search the Instagram accounts of individual persons for information pertinent to the crimes described. And the group chat was one of the things seized during the search. Framed as such, Lewis’s analogy crumbles.

Recall, however, that police also searched Lewis’s own Instagram account, an account in which he likely has some reasonable expectation of privacy.¹ But his challenges to the introduction of evidence seized from that account—to the extent he raises them—hinge on the impropriety of the state warrants that he claims supplied the probable cause for the federal warrant. As already explained, his lack of standing to challenge the state warrants forecloses this argument. *See Williams*, 354 F.3d at 511. So Lewis cannot prevail even if the state warrants were defective and the government relied on those defective warrants to procure the federal warrants—a contention it denies. *See Padilla*, 508 U.S. at 81–82; *Williams*, 354 F.3d at 510–11. Indeed, Lewis himself recognizes that his ability to challenge any of the federal warrants is tied to his “standing to challenge the state warrants.” (Appellant’s Br., ECF 42, 30). Thus, Lewis’s challenge to the second August 2022 warrant, which authorized the search of his own account, also fails.

¹We have not previously detailed, and need not now detail, the extent of this expectation because Lewis’s challenge fails for other reasons.

Franks Hearing. As alternative relief, Lewis asked the district court for a *Franks* hearing, and he now requests that we remand for one. At the hearing—if granted—Lewis plans to contest the affidavit supporting the second August 2022 federal search warrant. *See Franks*, 438 U.S. at 171. That affidavit, he argues, omitted the “critical information” that its averments were sourced from evidence obtained pursuant to defective state warrants. (Appellant’s Br., ECF 42, 35).

But to obtain a hearing based on such an omission, he must “make[] a strong preliminary showing” that the omitted material was both “critical to the finding of probable cause” and excluded “with an intention to mislead.” *United States v. Hanna*, 661 F.3d 271, 285 (6th Cir. 2011) (citation modified). An omission is critical when it materially alters the probable-cause analysis. *See United States v. Bateman*, 945 F.3d 997, 1008 (6th Cir. 2019) (requiring a defendant to prove that an alleged “material omission [was] necessary to the probable cause finding in the affidavit” to receive a *Franks* hearing (citation modified)). Lewis claims that the government’s failure to disclose that the defective state warrants formed the basis for the federal warrants materially influenced the magistrate judge’s probable-cause determination. But, at the risk of over-repetition, he lacks standing to challenge the state warrants. As a result, he cannot establish any infirmities in those warrants. For our purposes, then, the warrants pass muster. And failure to disclose reliance on viable warrants would not materially alter a probable-cause analysis. So Lewis cannot make the strong preliminary showing necessary for a *Franks* hearing.

III.

Sufficiency of the Evidence. Lewis next argues that the trial evidence was insufficient to convict him of aiding and abetting a kidnapping. We hold, however, that the government presented ample evidence from which a rational juror could find the elements of aiding and abetting a kidnapping beyond a reasonable doubt.

A. Standard of Review

We review *de novo* challenges to the sufficiency of the evidence. *United States v. Siefert*, 161 F.4th 379, 389 (6th Cir. 2025). We will affirm the district court’s decision and uphold the verdict so long as “any rational trier of fact could have found the elements of the offense beyond

a reasonable doubt.” *Id.* (citation modified). In our review, we take “the evidence in the light most favorable to the government and draw all inferences in the government’s favor.” *Id.* (citation modified). We thus “draw all inferences and resolve any credibility determinations in favor of preserving the jury’s verdict.” *Id.* But we cannot “weigh the evidence presented, consider the credibility of witnesses, or substitute our judgment for that of the jury.” *United States v. Jackson*, 470 F.3d 299, 309 (6th Cir. 2006) (citation modified).

B. Analysis

In relevant part, the federal kidnapping statute makes it a crime to “unlawfully seize[], confine[], inveigle[], decoy[], kidnap[], abduct[], or carr[y] away and hold[] for ransom or reward or otherwise any person.” 18 U.S.C. § 1201(a). So, to convict, the government must prove that the defendant did one of the things on this list, and that “the defendant held the victim . . . for ransom or reward or otherwise; and . . . the defendant did so in a manner that created federal jurisdiction.” *United States v. Blake*, 166 F.4th 611, 623 (6th Cir. 2026) (citation modified).

Under 18 U.S.C. § 2, any person who “aids[or] abets” the commission of a federal offense “is punishable as a principal.” 18 U.S.C. § 2(a). To prove that Lewis aided and abetted a kidnapping, the government had to show that he “(1) took an affirmative act in furtherance of [the kidnapping], (2) with the intent of facilitating [its] commission.” *Blake*, 166 F.4th at 624 (citation modified). A defendant takes “an affirmative act in furtherance” of a kidnapping “even if [he] aid[s] only one or some of the kidnapping’s phases or elements.” *Id.* And “a person who actively participates in a criminal scheme knowing its extent and character intends that scheme’s commission.” *Rosemond v. United States*, 572 U.S. 65, 77 (2014). This *mens rea* component ensures that the government introduces enough evidence to convince the jury that the defendant “wishe[d] to bring about” the criminal scheme and sought “by his action to make it succeed.” *Id.* at 76 (citation modified). That said, a defendant convicted of aiding and abetting need not have been the one to actually commit the underlying crime. *See United States v. Horton*, 847 F.2d 313, 322 (6th Cir. 1988) (“Before a conviction for aiding and abetting can be upheld, it is essential that the jury find that all essential elements of the underlying crime were committed by *someone*.” (emphasis added)).

Viewed in the light most favorable to the government, the evidence suffices to convince a jury, beyond a reasonable doubt, that Lewis took affirmative steps to further Jackson's kidnapping with the intention to facilitate it. *See Blake*, 166 F.4th at 624. The twenty-two-second video says nearly everything. It depicts Lewis, armed with a rifle, towering over Jackson and later jabbing her with that rifle as two women assault her. This intimidation tactic, employed while others were violently beating Jackson, was aimed at furthering the gang's attempt to pull information from Jackson about the carjacking and her role in it. And Lewis's actions were part and parcel of the broader aim of the kidnapping: to hold Jackson against her will until they could find out who was responsible for the carjacking so the 1125 gang could exact revenge. *See United States v. Frazier*, 129 F.4th 392, 404 (7th Cir. 2025) (affirming aiding-and-abetting-a-kidnapping conviction when the defendant "willfully joined and participated in the ongoing offense" by entering an apartment and holding a gun to the victim's head while "demanding return of [stolen] grillz").

We do not, however, consider the video evidence "in a vacuum." *See Davis v. Lafler*, 658 F.3d 525, 533 (6th Cir. 2011) (en banc). Jackson and Lewis's cell phones also pinged in the area near Blake's house while Jackson was being held, and the video confirmed their joint presence. And Lewis participated in the Instagram group chat that openly discussed the revenge plan and Jackson's kidnapping. From these facts, a rational juror could infer that Lewis knew that kidnapping Jackson was part of 1125's revenge plot, and that he intended to aid in that endeavor. *See Rosemond*, 572 U.S. at 76.

Lewis's arguments to the contrary do not persuade. First, because we view the evidence in the light most favorable to the government, it is immaterial whether the parties disputed below that Lewis poked Jackson with his rifle. *See Siefert*, 161 F.4th at 389. Construing the evidence in the government's favor, the video shows Lewis poking Jackson with his rifle.

Second, having concluded that the evidence was adequate to show that Lewis intended to aid and abet Jackson's kidnapping, the jury could and apparently did reject his contention that he, at most, assaulted Jackson.

Third, Lewis’s argument that he did not seize Jackson or aid in holding her misunderstands the relevant standard. “Holding requires an ‘unlawful physical or mental restraint for an appreciable period against the person’s will and with a willful intent to confine the victim.’” *Blake*, 166 F.4th at 624 (quoting *Chatwin v. United States*, 326 U.S. 455, 460 (1946)). But as we noted earlier, a conviction for aiding and abetting a kidnapping need “not rest on a finding that [the defendant] himself ‘held’” or seized the victim. *Id.*, at 624; *see Horton*, 847 F.2d at 322. So, “the jury could have convicted [Lewis] by finding that any of his confederates kidnapped Jackson, including by holding [or seizing] her, and that he took affirmative acts that intentionally facilitated that crime.” *Blake*, 166 F.4th at 624. Lewis does not dispute this point, and the evidence at trial overwhelmingly established that Jackson was kidnapped.

And, at any rate, even if Lewis did not *initially* “seize” Jackson, a rational juror could find that Lewis’s conduct in the video amounted to confinement. *See id.*; *United States v. Small*, 988 F.3d 241, 253–55 (6th Cir. 2021) (discerning no plain error in using dictionary to define “confine” as to “hold within a location or to keep within limits”); *cf. McLaughlin v. United States*, 476 U.S. 16, 17–18 (1986) (“[T]he display of a gun instills fear in the average citizen,” “creates an immediate danger that a violent response will ensue,” and “can cause harm when used as a bludgeon.”).

Fourth, Lewis urges us to adopt a four-factor test other circuits use for determining what constitutes an “appreciable period” under the holding element. In his view, “more than the momentary restraint” depicted in the 22-second video is required. (Appellant’s Br., ECF 42, 44). But, to reiterate, Lewis could be convicted upon a finding that “any of his confederates” had kidnapped Jackson. *Blake*, 166 F.4th at 624; *Horton*, 847 F.2d at 322. And here, a rational juror could conclude from Jackson’s testimony and text messages that the seven-plus hours she was held against her will was an appreciable period. *See United States v. Ingram*, 846 F. App’x 374, 384 (6th Cir. 2021) (concluding that a reasonable juror could find that the victim was held against her will when the defendant “continued to drive her away from her car for about an hour after [he] rape[d] [her]”). So we have no occasion to adopt a new test for what constitutes an “appreciable period.”

And fifth, as to the kidnapping statute’s jurisdictional element, we reject Lewis’s attempt to incorporate a Commerce Clause argument from Blake’s appeal. The request is improper. It does not comply with Federal Rule of Appellate Procedure 28(i) because Lewis’s case was not consolidated with Blake’s, and Lewis is the only appellant here. Fed. R. App. P. 28(i); *see United States v. Gibbs*, 182 F.3d 408, 421 (6th Cir. 1999) (allowing “other defendants” to adopt by reference the arguments of two other defendant-appellants). And beyond that procedural barrier, we are bound by circuit precedent holding that cellphone use in furtherance of a kidnapping satisfies the jurisdictional requirement “because a cellphone is itself an instrumentality of interstate commerce.” *Blake*, 166 F.4th at 625.

IV.

Evidentiary Challenges. Next, Lewis argues that the district court erred when it (1) admitted (a) a photo that depicted him standing beside Turner while armed with a rifle and (b) his Instagram message, stating, “That is ki[d]napping”; and (2) failed to give limiting instructions for each. We take each argument in turn.

A. Standard of Review

We review challenges to a district court’s evidentiary rulings for an abuse of discretion. *United States v. Simpson*, 138 F.4th 438, 448 (6th Cir. 2025). A district court abuses its discretion only if it “relies on the wrong legal standard, misapplies the correct standard, or rests [its decision] on clearly erroneous facts.” *United States v. Curry*, 170 F.4th 559, 570 (6th Cir. 2026). But even if evidence is erroneously admitted, we still review the error for harmlessness and will deem it so if the record fairly assures us that the improperly admitted evidence did not “substantially sway[]” the verdict. *United States v. Singh*, 147 F.4th 652, 661 (6th Cir. 2025) (citation modified). It is the government’s burden to show that the error had no “material[]” effect on the verdict. *Id.* (citation modified).

When a defendant fails to object to the admission of evidence, however, we review for plain error. *United States v. LaVictor*, 848 F.3d 428, 451 (6th Cir. 2017). To establish plain error, Lewis must show a clear or obvious error that affected his substantial rights and “seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings.” *United States v.*

Henry, 797 F.3d 371, 374 (6th Cir. 2015) (citation modified). An error that affects a defendant's substantial rights is one that establishes "a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *United States v. Bauer*, 82 F.4th 522, 530 (6th Cir. 2023) (citation modified).

Here, we review admission of the photo for an abuse of discretion and admission of the Instagram message for plain error. And because Lewis failed to object to the lack of a limiting instruction, we also review for plain error the district court's failure to provide any such instructions as to the photo and message. Fed. R. Crim. P. 52(b); *United States v. Fraser*, 448 F.3d 833, 841–42 (6th Cir. 2006); *see also United States v. Trujillo*, 376 F.3d 593, 606 n.7 (6th Cir. 2004).

B. Photograph with Turner

Error or not, the admission of the photo was harmless. Again, an error is harmless so long as we are reassured by the record that the error did not "substantially sway[]" the jury's verdict. *Singh*, 147 F.4th at 661 (citation modified). The photo was no keystone. On the contrary, the government introduced plenty of evidence that connected Lewis to the 1125 gang and established his intent to aid in Jackson's kidnapping. Lewis participated in the private Instagram chat in which gang members discussed the revenge plot and kidnapping. Cell site data placed Lewis's phone near Blake's home for at least four hours during the kidnapping. And the video confirmed his presence.

We also harbor no fear that the photo unfairly prejudiced Lewis (by depicting him with guns and drugs) because the video independently established his possession of a firearm, and his attorney's opening statement acknowledged that he smoked marijuana. (Trial Trans., R. 321, PageID 2568). In short, the other admissible evidence reassures us that even assuming an error occurred, it did not substantially sway the jury's verdict. *Singh*, 147 F.4th at 661. The same is true for the district court's failure to give a limiting instruction as to the photo. Lewis has not shown that but for the omission of such an instruction, the outcome of his trial would have been different. *Bauer*, 82 F.4th at 530. So he has not identified a reversible error.

C. Admission of Instagram Message

Lewis’s challenge to the admission of his Instagram message declaring “That is ki[d]napping” also fails. Because the probative value of this message outweighs the danger of unfair prejudice, we see no plain error.

Evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence” and that fact “is of consequence in determining the action.” Fed. R. Evid. 401. But even if relevant, a district court can still exclude that evidence under Rule 403. The dispositive question under Rule 403 is whether the evidence’s “probative value is substantially outweighed” by the danger of “unfair prejudice.” Fed. R. Evid. 403. This balancing test is “strongly weighted toward admission.” *United States v. Baskerville*, 164 F.4th 459, 491 (6th Cir. 2026) (citation modified). Showing unfair prejudice is a tough hill to climb because it “does not arise whenever evidence provides powerful proof of a defendant’s guilt.” *Id.* at 492 (citation modified). Rather, a defendant must show “more,” “like a tendency to drive the jury to convict on an improper basis, such as a ground different from proof specific to the offense charged.” *Id.* (citation modified).

As we observed in *Blake*, the district court “conditionally admitted” the Instagram group chat under Rule 801(d)(2)(E), the co-conspirator exception to hearsay. *Blake*, 166 F.4th at 620. On appeal, Lewis does not challenge admission of the chat as a whole. He singles out his statement identifying the group’s actions as a kidnapping as lacking any probative value and says it was “highly prejudicial.” (Appellant’s Br., ECF 42, 57).² But this message had significant probative value because it made several things more probable than they would be without the statement. Most obviously, it bolstered Jackson’s account that she was kidnapped. It also enhanced the likelihood that Lewis knew it was a kidnapping, and that he intended to aid in its commission as he stood guard over Jackson and poked her with his rifle.

²In *Blake*, we concluded that any error arising from admission of the Instagram chat messages was harmless because they were “admissible on other grounds.” *Blake*, 166 F.4th at 620. For example, “messages sent by Blake were admissible as party-opponent admissions under Rule 801(d)(2)(A).” *Id.* And for reasons discussed *infra*, namely the absence of unfair prejudice, the same is true of Lewis’s message describing Jackson’s detention as a “ki[d]napping.” See Fed. R. Evid. 801(d)(2)(A) (a statement is not hearsay if “offered against an opposing party and . . . made by the party in an individual or representative capacity”).

The context in which the statement was made is also telling—a group chat used during the commission of the kidnapping and to gather information for 1125’s revenge plot. Most notably, chat participants pointed out Lewis’s presence in the video of Jackson’s attack and the possibility that he poked Jackson with his gun. And Lewis expressed apparent anger at the video existing in the first place. So the content of the conversation makes it even more probable that Lewis knew of the kidnapping at the time and that he intended to facilitate it then, too. And while his statement was prejudicial, as almost all evidence is, we cannot say that it was unfairly so, much less that any prejudice outweighed the evidence’s significant probative value. *See United States v. Page*, 163 F.4th 385, 397 (6th Cir. 2025).

Lewis insists that admission of his Instagram message improperly invited the jurors to “assume post-hoc characterizations of an event suffice to show intent at the time of the event.” (Appellant’s Br., ECF 42, 57). But they can. Juries routinely and appropriately consider post hoc statements or conduct to show that a defendant had the requisite intent and willfulness when they committed a crime. *See, e.g., United States v. Jaffal*, 79 F.4th 582, 593–98 (6th Cir. 2023) (discerning no error in admission of jail calls to show the defendant’s intent to distribute narcotics); *United States v. Barnes*, 822 F.3d 914, 920–24 (6th Cir. 2016) (same but with a limiting instruction); *see also United States v. Ausmus*, 774 F.2d 722, 728 (6th Cir. 1985) (holding that a “defendant’s failure to pay taxes, both prior to *and following* the years in question” constituted relevant evidence (emphasis added)). So we reject Lewis’s contention that his post-kidnapping statements could not be used to establish his intent. Further, because Lewis does not challenge the district court’s admission of the statement under Rule 801(d)(2)(E), and because there was no error as to the Rule 403 balancing, the district court was not required to give a limiting instruction.³ *See United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005) (explaining that statements properly admitted under Rule 801(d)(2)(E) become “competent evidence for all purposes” and thus “no limiting instruction [is] required”).

³Even if Lewis had preserved a challenge to the district court’s admission of *his own* message *against himself* under Rule 801(d)(2)(E) as a statement “made by [a] party’s *coconspirator* during and in furtherance of the conspiracy,” Fed. R. Evid. 801(d)(2)(E) (emphasis added), we would perceive no error because the message was admissible under Rule 801(d)(2)(A) as a statement made by an opposing party in an individual capacity. And it was, therefore, “competent evidence for all purposes” and necessitated no limiting instruction. *United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005).

V.

Jury Instructions—Advance Knowledge. Finally, Lewis argues that the district court plainly erred when it failed to include an advance-knowledge requirement in its aiding-and-abetting instruction. But this argument fails because the district court’s instruction encompassed an advance-knowledge component. So the parties’ disagreement about which standard of review we should apply is of no moment.

We reverse a jury instruction as erroneous “only if the instructions, viewed as a whole, were confusing, misleading, and prejudicial.” *United States v. Frei*, 995 F.3d 561, 565 (6th Cir. 2021) (citation modified). That is not the case here as there was no appreciable deviation from a legal rule. The district court’s aiding-and-abetting instruction hewed closely to the Sixth Circuit pattern jury instruction. *See* Sixth Circuit Pattern Criminal Jury Instruction 4.01(2)-(3); *see also Frei*, 995 F.3d at 565 (observing that whether a given instruction “mirror[s] or track[s]” a pattern instruction is “one factor” in evaluating whether the instruction is “misleading or erroneous” (citation modified)). And after instructing the jury on the elements of a kidnapping, the court informed the jury that it had to find three things to convict:

One, that the crime of kidnapping was committed. Two, that the defendant helped to commit the crime or encouraged someone else to commit the crime. And three, that the defendant intended to help commit or encourage the crime.

(Trial Trans., R. 331, PageID 3641; *see* Jury Instructions, R. 310, PageID 2231). The court also warned the jury that proof that Lewis “may have known about the crime” was “not enough” for it to find him guilty. (Trial Trans., R. 331, PageID 3641). Instead, the government had to prove that Lewis “did something to help or encourage the crime with the intent that the crime be committed.” (*Id.*).

Considering a nearly identical instruction (albeit for the “double-decker crime” of aggravated identity theft) in *United States v. Chavez*, we concluded that this language “cover[s] the ‘advance knowledge’ requirement.” 951 F.3d 349, 362 (6th Cir. 2020). As we observed in *Chavez*, “you can’t do something to help or encourage a crime with the intent that the crime be committed if you don’t already know about the crime.” *Id.* (citation modified). We hold fast to that reasoning here.

Lewis's arguments to the contrary are unpersuasive. We have not and will not require the district court to use the "precise words" of "advance knowledge" in its instruction. *Id.*, at 362. And, as explained, the instruction given covers the advance-knowledge requirement anyway. *Id.* Moreover, contrary to Lewis's contention, his case differs from *United States v. Henry*, 797 F.3d 371 (6th Cir. 2015). As we explained in *Chavez*, the instruction in *Henry* was problematic because it "wrongly implied that a defendant who intended to help only the *underlying* offense [(the bank robbery)] could still be charged and convicted for aiding and abetting the *compound* crime [(an *armed* bank robbery)]." *Chavez*, 951 F.3d at 362 (citing *Henry*, 797 F.3d at 374). There is no compound crime here, and the instruction clearly conveyed that Lewis had to intend to assist the kidnapping. So this case lacks the problematic implication that was present in *Henry*.

VI.

For those reasons, we AFFIRM.