

11-425-cr(L)
United States v. Defreitas

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term 2012

4 (Argued: March 11, 2013 Decided: May 31, 2013)

5 Docket Nos. 11-425-cr(L), 11-429-cr(CON), 11-985-cr(CON)

6 -----x

7 UNITED STATES OF AMERICA,

8
9 Appellee,

10
11 -- v. --

12
13 ABDUL KADIR, ABDEL NUR, RUSSELL DEFREITAS a/k/a MOHAMMED,

14
15 Defendants-Appellants,

16
17 KAREEM IBRAHIM a/k/a AMIR KAREEM,

18
19 Defendant.

20
21 -----x

22 B e f o r e : WALKER, SACK, and WESLEY, Circuit Judges.

23 Defendants-Appellants Abdul Kadir and Russell Defreitas appeal
24 from the 2011 judgments of conviction and sentences of the United
25 States District Court for the Eastern District of New York
26 (Irizarry, Judge). After a jury trial, Defendants-Appellants were
27 found guilty of conspiracy to carry out acts of terrorism against
28 John F. Kennedy International Airport. The district court then
29 sentenced them to life in prison. We hold that there was no error
30 in the district court's trial rulings or in the sentences imposed.
31 AFFIRMED.

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16 Appellant Abdul Kadir.

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20 Appellant Abdel Nur.

21
22 JOHN M. WALKER, JR., Circuit Judge:

23 Defendants-Appellants Abdul Kadir and Russell Defreitas appeal
24 from the 2011 judgments of conviction and sentences of the United
25 States District Court for the Eastern District of New York
26 (Irizarry, Judge). After a jury trial, Defendants-Appellants were
27 found guilty of conspiracy to carry out acts of terrorism against
28 John F. Kennedy International Airport. In these appeals, we
29 address various evidentiary rulings made during the trial of
30 Russell Defreitas and Abdul Kadir (collectively, "defendants") as
31 well as the reasonableness of the district court's sentences. We
32 also dispose of the appeal of co-defendant Abdel Nur and the
33 motions relevant to that appeal.

BACKGROUND

We assume the parties' familiarity with the underlying facts of this case and recite only those details relevant to this appeal.

The conspiracy to blow up John F. Kennedy International Airport ("JFK Airport") began in 2005 or 2006. In 2006, Steven Francis, a confidential informant for the FBI, met with Defreitas and was later recruited into the conspiracy. Francis wore a recording device during many of his interactions with the conspirators, and the recordings of these conversations provided much of the evidence at trial. In addition to Defreitas, the operative indictment included as defendants and co-conspirators Nur, Kadir, and Kareem Ibrahim.

Francis and Defreitas conducted surveillance of JFK Airport four times in January 2007 and videotaped the bombing targets, including fuel tanks and pipelines that, according to Defreitas, would destroy "the whole of Kennedy" and part of Queens when they exploded. Defreitas App. at 831 (Recording Tr.). The government presented evidence that Nur was brought into the conspiracy at least in part to help them arrange a meeting with Yasin Abu Bakr, the leader of a militant Islamic group called Jamaat Al-Muslimeen ("JAM") located in Trinidad. The conspirators wanted Abu Bakr to connect them with Adnan Shukrijumah, an al Qaeda operative known for his bomb-making abilities.

1 In February 2007, Defreitas and Francis met Kadir in Guyana.
2 Kadir expressed interest in the plot and urged Francis and
3 Defreitas to refer to the attack using code words to avoid
4 detection. In late May 2007, Ibrahim was brought into the
5 conspiracy in order to present the plot to his contacts in Iran.
6 Between February and May 2007, the conspirators met and discussed
7 their plans by telephone and in person in Guyana and Trinidad. In
8 one telephone conversation, Defreitas twice described the planned
9 attack as "worse than the World Trade Center," referring to the
10 September 11, 2001 attacks. Id. at 940, 948 (Recording Tr.).

11 Kadir, Defreitas, Ibrahim, and Nur were arrested in early June
12 2007. After being informed of his Miranda rights, Defreitas
13 admitted to his leadership role in the plot. On the same day,
14 Defreitas, Kadir, Nur, and Ibrahim were charged by complaint with
15 conspiracy to attack a public transportation system, in violation
16 of 18 U.S.C. § 2332f(a)(2), (b)(1)(E), (b)(2)(A), and (c);
17 conspiracy to destroy a building by fire or explosive, in violation
18 of 18 U.S.C. § 844(n); conspiracy to attack aircraft and aircraft
19 materials, in violation of 18 U.S.C. § 32(a)(8); and conspiracy to
20 attack a mass transportation facility, in violation of 18 U.S.C.
21 § 1992(a)(8) and (10), (c)(1), and (c)(2). Defreitas and Kadir
22 were also charged with surveillance of a mass transportation
23 facility, in violation of 18 U.S.C. § 1992(a)(8), (c)(1), (c)(2),
24 and 18 U.S.C. § 2. On June 28, 2007, a grand jury indicted the

1 defendants on the above charges, as well as a charge of conspiracy
2 to destroy international airport facilities, in violation of 18
3 U.S.C. §§ 37(a), 37(b)(1), and 37(b)(2).

4 Prior to trial, the district court severed the case of Ibrahim
5 from the other defendants. Just before the start of trial, Nur
6 pleaded guilty to the lesser charge of providing material support
7 to terrorists and thereafter was sentenced to 180 months'
8 imprisonment.

9 Following a trial in July 2010, a jury convicted Defreitas on
10 all six counts, and Kadir on all but the surveillance count. At
11 separate sentencing proceedings, the district court sentenced each
12 defendant to life imprisonment.

13 DISCUSSION

14 Defreitas and Kadir argue on appeal that the district court
15 made various errors during trial and imposed sentences that were
16 unreasonable. Nur has also appealed, but he has advanced no
17 arguments. His counsel has filed a motion to withdraw pursuant to
18 Anders v. California, 386 U.S. 738 (1967), and the government has
19 moved to dismiss Nur's appeal.

20 1. Defreitas and Kadir

21 a. Anonymous Jury

22 Before trial, the government moved to empanel an anonymous
23 jury on three grounds: (1) the serious and violent nature of the
24 crimes charged; (2) the intensity of the international media

1 coverage of the trial; and (3) threats to the judicial system
2 itself, including alleged threats by Defreitas against his own
3 attorney and potential trial witnesses. Defreitas objected, arguing
4 that an anonymous jury was inappropriate because he could not have
5 carried out the plot and his co-conspirators were all outside the
6 United States.

7 The district court granted the government's motion, finding
8 that the evidence of threats against witnesses, the seriousness of
9 the allegations, and the extensive media coverage of the trial all
10 supported the government's motion. The district court also
11 carefully employed mechanisms designed to ensure a fair jury,
12 including an extensive juror questionnaire, a hearing to permit the
13 government and the defendants to strike jurors for cause, two weeks
14 of additional questioning, and a full opportunity to exercise
15 peremptory challenges.

16 If a district court has taken reasonable precautions to
17 protect a defendant's fundamental rights, we review its decision to
18 empanel an anonymous jury for abuse of discretion. United States v.
19 Thai, 29 F.3d 785, 801 (2d Cir. 1994). "[W]hen genuinely called
20 for and when properly used, anonymous juries do not infringe a
21 defendant's constitutional rights." United States v. Pica, 692
22 F.3d 79, 88 (2d Cir. 2012) (quotation marks omitted). A district
23 court may order the empaneling of an anonymous jury "upon (a)
24 concluding that there is strong reason to believe the jury needs

1 protection, and (b) taking reasonable precautions to minimize any
2 prejudicial effects on the defendant and to ensure that his
3 fundamental rights are protected." Id. (quotation marks omitted).

4 If a district court determines that an anonymous jury is
5 appropriate, the court must take "reasonable precautions to
6 minimize any prejudicial effects on the defendant and to ensure
7 protection of his fundamental rights." Thai, 29 F.3d at 801. This
8 can be done by giving the jurors "a plausible and nonprejudicial
9 reason for not disclosing their identities" and "the court's
10 conduct of a *voir dire* designed to uncover bias." Id. Here the
11 district court specified in the questionnaire that the reason for
12 the anonymous jury was that, given the media interest in the case,
13 anonymity would protect the jurors' "rights of privacy" and assist
14 them "in discharging [their] responsibility as jurors
15 independently, fairly and impartially." Defreitas App. at 287-88
16 (Jury Instructions).

17 We see no basis to fault the district court's empanelment of
18 an anonymous jury in this case. Defreitas and his co-defendants
19 were charged with serious crimes of terrorism. Their plot to blow
20 up oil pipelines and jet fuel tanks at JFK Airport had the
21 potential to kill hundreds or thousands of people. The district
22 court reasonably concluded that the jurors would be fearful if
23 their identities were revealed to these defendants. Our view,
24 expressed in an earlier case, that "the reasonable likelihood that

1 the pervasive issue of terrorism would raise in the jurors' minds a
2 fear for their individual safety" holds here and supports the
3 district court's decision. United States v. Stewart, 590 F.3d 93,
4 125 (2d Cir. 2009). This ruling is buttressed by the extensive
5 media coverage of the case, an additional factor we have found
6 significant in considering the decision to empanel an anonymous
7 jury. See United States v. Wong, 40 F.3d 1347, 1377 (2d Cir.
8 1994).

9 The district court also relied on separate reports by two
10 jailhouse informants that Defreitas had threatened to harm
11 potential witnesses. Defreitas disputed their accounts and argues
12 that the district court should not have relied on their testimony
13 without conducting an evidentiary hearing. Because "[t]he district
14 court has discretion to determine whether or not an evidentiary
15 hearing is needed on the government's allegations" concerning a
16 defendant's interference with the case, United States v. Aulicino,
17 44 F.3d 1102, 1116 (2d Cir. 1995), and because there were
18 sufficient independent grounds for empaneling an anonymous jury, we
19 need not address this point. Our confidence that the use of an
20 anonymous jury was neither an abuse of discretion nor unfairly
21 prejudicial is strengthened by the record of appropriate measures
22 the district court took to ensure the jury's impartiality, which
23 was never seriously challenged.

1 **b. Admission of Matthew Levitt's Expert Testimony**

2 Before trial, the government moved in limine for the admission
3 of terrorism expert Matthew Levitt's testimony to describe al Qaeda
4 and Hezbollah and their activities in South America and to define
5 various terms related to terrorism. See United States v.
6 Defreitas, 07-CR-543(DLI) (SMG), 2011 WL 317964, at *4 (E.D.N.Y.
7 Jan. 31, 2011). The government asserted that it was relevant
8 because "[t]he fact that the defendants wanted to present their
9 plot to organizations and operatives with a well-established
10 history of participating in international terrorist activities
11 demonstrates the seriousness of their intent to have their plot
12 succeed." Id. As relevant on appeal, the defendants opposed
13 Levitt's testimony on the basis that the mention of terrorist
14 organizations would be more prejudicial than probative and thus
15 should be excluded under Federal Rule of Evidence 403.

16 The district court granted the government's motion, reasoning
17 that aside from supporting the government's allegation, the adverse
18 effect was unclear. Levitt testified at trial without further
19 objection from the defendants. Levitt's testimony was dry and
20 academic, devoid of vivid imagery that might excite the jury. See,
21 e.g., Kadir App. at 192 (Levitt Direct Testimony).

22 A district court's decision to admit expert testimony is
23 reviewed for abuse of discretion. United States v. Massino, 546
24 F.3d 123, 132 (2d Cir. 2008) (per curiam). Federal Rule of

1 Evidence 403 provides that the district court "may exclude relevant
2 evidence if its probative value is substantially outweighed by a
3 danger of . . . unfair prejudice, confusing the issues, [or]
4 misleading the jury," among other concerns not relevant here.
5 Provided the district court "has conscientiously balanced the
6 proffered evidence's probative value with the risk for prejudice,
7 its conclusion will be disturbed only if it is arbitrary or
8 irrational." United States v. Al-Moayad, 545 F.3d 139, 159-60 (2d
9 Cir. 2008) (quotation marks omitted). "To avoid acting
10 arbitrarily, the district court must make a conscientious
11 assessment of whether unfair prejudice substantially outweighs
12 probative value." Id. at 160 (quotation marks omitted).

13 Admitting Levitt's testimony was not an abuse of discretion.
14 As the district court noted, Levitt's testimony was "probative of
15 the intent element of the charged conspiracies" because the
16 "government's allegation is that defendants intended to obtain
17 support from [al Qaeda and Hezbollah], and/or identified with their
18 goals." Defreitas, 2011 WL 317964, at *8. The defendants wanted
19 to exclude this testimony because it was detrimental to their case,
20 but "[e]vidence is [unduly] prejudicial only when it tends to have
21 some adverse effect upon a defendant *beyond* tending to prove the
22 fact or issue that justified its admission into evidence." United
23 States v. Figueroa, 618 F.2d 934, 943 (2d Cir. 1980) (emphasis
24 added). It was not error for the district court to allow testimony

1 about these groups because it supported the government's
2 allegations against the defendants and was not unfairly
3 prejudicial.

4 **c. Kadir Photographs**

5 As part of its case against Kadir, the government introduced
6 three photographs of Kadir posing with multiple machine guns.
7 During trial, Kadir filed a motion in limine to exclude these
8 photos, as well as photos depicting Kadir's children with guns, on
9 the grounds that the photos were irrelevant, that he had not been
10 charged with possession of a firearm, and that the photos
11 constituted inadmissible character evidence. The government argued
12 on the basis of United States v. Khalil, 214 F.3d 111 (2d Cir.
13 2000), that the photos were admissible to rebut the defense's
14 portrayal of Kadir as a peaceful, religious teacher seeking only to
15 raise funds to build a mosque.¹ Specifically, during his opening
16 statement, Kadir's counsel described Kadir as

17 a man who lives in the country of Guyana, was
18 well-respected, 9 children, 24 grandchildren,
19 working guy. . . . He's a Muslim Shiite. He
20 goes to Iran. . . . And Kadir had a dream . .
21 . to build a mosque, a Shiite mosque, in
22 Guyana, and there's nothing wrong with that[.]

23
24 Gov't App. at 181-83 (Trial Tr.).

¹ In Khalil, we affirmed the district court's admission of photos of defendant Abu Mezer "wearing garb that is associated with violent militants, and assuming a posture of martyrdom . . . [as] relevant to rebut the defense portrayals of Abu Mezer as having no destructive objective and posing no real threat." 214 F.3d at 122.

1 After hearing argument, the district court admitted the photos
2 of Kadir, but not the photos of his children, noting that the
3 admitted photos were

4 relevant to rebut [portrayals] by the defense
5 in this case of Mr. Kadir as having no
6 destructive objective and posing no real
7 threat to the safety of human beings in
8 general. . . . These photographs go towards
9 rebutting that in the way that was permitted,
10 in the court's view, in the Khalil case.

11
12 Kadir App. at 236-38 (Trial Tr.). The district court noted that
13 Khalil was not identical in part because Kadir, unlike Mezer in
14 Khalil, had not been charged with weapons possession. When the
15 photographs were introduced to the jury, the district court gave a
16 limiting instruction, noting "[t]his evidence may be considered by
17 you only to the extent it bears upon Defendant Kadir's knowledge,
18 intent or motive to commit the acts charged in the indictment."
19 Id. at 248 (Trial Tr.). It is noteworthy that, as part of his
20 defense, Kadir himself later referred to all of the photos,
21 including those excluded earlier by the district court.

22 The district court's admission of the Kadir photographs is
23 reviewed for abuse of discretion. See Marcic v. Reinauer Transp.
24 Cos., 397 F.3d 120, 124 (2d Cir. 2005). Kadir's argument that the
25 photos were impermissible character evidence under Federal Rule of
26 Evidence 404 is undermined by his gamesmanship, most notably his
27 introduction of *all* of the photos as part of his defense.²

² Kadir's attorney stated that the purpose of the motion in limine

1 In determining whether the district court properly admitted
2 the photos as evidence of motive, opportunity, or intent, we
3 consider whether: "(1) [the evidence] was offered for a proper
4 purpose; (2) it was relevant to a disputed trial issue; (3) its
5 probative value is substantially outweighed by its possible
6 prejudice; and (4) the trial court administered an appropriate
7 limiting instruction." United States v. Edwards, 342 F.3d 168, 176
8 (2d Cir. 2003). The photos satisfy all four requirements: they
9 were offered (1) to show that Kadir's intent was not confined to
10 peaceful fundraising for a future mosque; which (2) was a disputed
11 trial issue; moreover, (3) the photos' probative value, in showing
12 intent, was not substantially outweighed by the prejudice caused
13 Kadir; and (4) the trial court issued an appropriate limiting
14 instruction to the jury more than once. The district court did not
15 abuse its discretion in admitting the photographs.

16 **d. Declassification of October 2006 Meeting Memo**

17 In October 2006, case agents met in Barbados to discuss the
18 ongoing investigation and development of the plot. The defendants
19 were provided with a partially declassified report of that meeting
20 during discovery and at trial moved unsuccessfully to have the rest

had been "to control when the pictures were coming in," to which the district court responded that it had "never, never, never" in 31 years of practice heard that a party could argue to affect the timing of the introduction of evidence. Gov't App. at 341, 342-43 (Trial Tr.).

1 declassified and turned over to them. They argue on appeal that
2 the district court's denial of their motion was error.

3 At the Barbados meeting, there were at least three individuals
4 present, including two case agents, Robert Addonizio and Michael
5 Hanratty. Louis Napoli, Francis's primary handler, did not attend
6 the meeting. The third participant, whose identity remains
7 classified, authored the challenged report about the meeting (the
8 "October 2006 report"). During discovery, the government
9 declassified the parts of the report that stated that "U.S.
10 Government officers" would reach out to Francis "and task him to
11 increase pressure on the plotters . . . to move ahead," and that
12 after Defreitas returned to the United States "U.S. Government
13 officers plan[ned] to mount a full court press on Defreitas with an
14 eye towards building a case of material support to terrorism."
15 Defreitas App. at 344 (October 2006 Report).

16 Urging complete declassification of the report and its
17 author's identity at trial, Defreitas argued that "the document at
18 least raises the possibility and the likelihood that there is a
19 witness out there who has direct evidence of government pressure."
20 Id. at 413-14, 421 (Trial Tr.). Counsel for Defreitas later argued
21 that "because of the classified issues, Mr. Defreitas's ability to
22 present his defense is compromised." Id. at 423 (Trial Tr.).

23 In denying Defreitas's motion to have the document
24 declassified, the district court ruled that Defreitas could elicit

1 testimony on the structure of the investigation through cross-
2 examination of the government's witnesses. Addonizio, Napoli, and
3 Francis testified at trial, and Hanratty was available to testify
4 but was not called by either side.

5 We review an evidentiary ruling such as this for abuse of
6 discretion and "will reverse only if an erroneous ruling affected a
7 party's substantial rights." Marcic, 397 F.3d at 124. In general,
8 a party is entitled to a new trial if the district court committed
9 errors that were a "clear abuse of discretion" and "clearly
10 prejudicial" to the trial's outcome, when measured "by assessing
11 the error in light of the record as a whole." Id. (quotation marks
12 omitted).

13 The district court's decision not to declassify the remaining
14 classified portions of the October 2006 report and the identity of
15 its author was not an abuse of discretion. Defreitas has failed to
16 show what the defense could gain through the report's
17 declassification that was not otherwise available by cross-
18 examining the government's witnesses at trial. Moreover, as the
19 district court noted, "the fact that neither defendant [was]
20 seeking the entrapment defense diminishe[d] the importance of the
21 document and therefore ma[de] it less relevant." Defreitas App. at
22 432-33 (Trial Tr.). Any information about pressures on Francis,
23 orders given to Francis, or the overall structure of the
24 investigation could have been elicited through Francis himself as

1 well as through the other government investigators. The district
2 court's ruling was not error, much less reversible error.

3 **e. Exclusion of Kadir Tape Recordings**

4 During Kadir's cross-examination of Francis, Kadir tried to
5 introduce portions of a recording made by Francis during which a
6 student of Kadir's makes statements such as: "we are not with al
7 Qaeda. We don't agree with what al Qaeda does. We don't agree
8 with killing innocent people." Kadir App. at 158 (Trial Tr.).

9 Although Kadir makes no similar statements, the defense argued to
10 the district court that he was "agreeing [with] and adopting all of
11 [his student's] statements," by saying "a hum, a hum." Id. (Trial
12 Tr.). Kadir argued that his own statements ("a hum, a hum") were
13 not hearsay because they reflected his intent as expressed by his
14 student. The district court disagreed, ruling that Kadir's "mere
15 statement of 'mmm mm' . . . [wa]sn't necessarily an adoption [of]
16 what someone says," id. at 165 (Trial Tr.), and the testimony was
17 excluded as hearsay.

18 As with the other evidentiary rulings discussed above, the
19 district court's decision to exclude this tape recording is
20 reviewed for abuse of discretion. See Marcic, 397 F.3d at 124. A
21 defendant may not introduce his own prior out-of-court statements
22 because they are "hearsay, and . . . not admissible." United
23 States v. Marin, 669 F.2d 73, 84 (2d Cir. 1982). However, a
24 "statement of the declarant's then-existing state of mind (such as

1 motive, intent, or plan)" is exempted from the hearsay rule. Fed.
2 R. Evid. 803(3). Thus, the student's statements would be
3 admissible if Kadir could show that they reflect Kadir's own
4 intent.

5 We find no fault with the district court's conclusion that
6 Kadir did not establish his adoption of his student's statements.
7 Kadir cites to one case that he alleges stands for the proposition
8 that "A-hum" means "yes." See Johnson v. Ricks, 9:02-CV-1366
9 (NPM), 2007 WL 3171782, at *9 (N.D.N.Y. Oct. 29, 2007) (in response
10 to a question by the court, a juror answers "A-hum," which the
11 court apparently accepts as a "yes" answer). There was no holding
12 to that effect, however, and the colloquy between judge and juror
13 in Johnson shows at most that such an utterance *can* mean yes. As
14 the government points out, an "mm-mmm" noise "is as likely to
15 represent agreement with what somebody is saying as it is to
16 represent not paying attention to what somebody is saying, or even
17 disagreement with what somebody is saying coupled with a
18 willingness to hear the person out." Gov't Br. at 95. Absent more
19 persuasive evidence that Kadir shared his student's views, it was
20 not error for the district court to exclude the recording.

21 **f. Sentencing**

22 Both Kadir and Defreitas challenge their sentences of life
23 imprisonment as substantively unreasonable. Kadir also argues that

1 his sentence was procedurally unreasonable. These arguments are
2 without merit.

3 Probation calculated the base offense level for all of
4 Defreitas's convictions to be 33. A twelve-level terrorism
5 enhancement was added pursuant to U.S.S.G. § 3A1.4(a),³ and four
6 additional levels were added under § 3B1.1(a) because Defreitas was
7 a leader of the plot. With an adjusted offense level of 49, and an
8 automatic criminal history category of VI because the crime
9 involved terrorism, U.S.S.G. § 3A1.4(b), Defreitas's offense level
10 exceeded by six levels the highest level on the sentencing chart,
11 level 43, which itself carried a life sentence recommendation
12 without any regard to a defendant's criminal history.

13 The base offense level for Kadir's offenses was 33, which was
14 similarly increased by twelve levels under the terrorism
15 enhancement and by two levels for testifying falsely at trial.
16 With a criminal history category of VI, and an adjusted offense

³ Section 3A1.4, describing adjustments for crimes involving terrorism, provides:

(a) If the offense is a felony that involved, or was intended to promote, a federal crime of terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32.

(b) In each such case, the defendant's criminal history category . . . shall be Category VI.

In short, the penalties for terrorism are harsh: at offense level 32 and criminal history category VI, the recommended sentence is 210-262 months.

1 level of 47, Kadir's recommended sentence also fell above the
2 sentencing chart's range.

3 This Court reviews sentences for reasonableness under the
4 deferential abuse of discretion standard. United States v.
5 Johnson, 567 F.3d 40, 51 (2d Cir. 2009). Both the substance and
6 the procedure of the sentencing are reviewed for reasonableness.
7 Id. Among other things, procedural error may occur when the
8 district court "(1) fails to calculate the Guidelines range; (2) is
9 mistaken in the Guidelines calculation; (3) treats the Guidelines
10 as mandatory; (4) does not give proper consideration to the
11 § 3553(a) factors; (5) makes clearly erroneous factual findings;
12 (6) does not adequately explain the sentence imposed; or
13 (7) deviates from the Guidelines range without explanation." Id.

14 When examining substantive reasonableness, the Court takes
15 "into account the totality of the circumstances, giving due
16 deference to the sentencing judge's exercise of discretion, and
17 bearing in mind the institutional advantages of district courts."
18 United States v. Cavera, 550 F.3d 180, 190 (2d Cir. 2008) (en
19 banc). Substantive reasonableness review asks whether the district
20 court's sentence was "shockingly high, shockingly low, or otherwise
21 unsupportable as a matter of law." United States v. Rigas, 583
22 F.3d 108, 123 (2d Cir. 2009).

23 None of either defendant's sentencing arguments supports
24 resentencing. Kadir argues that he was previously offered a plea

1 agreement, but that the offer was withdrawn. On this basis, he
2 argues that his sentence was procedurally unreasonable because he
3 was punished for going to trial, but he offers no evidence of such
4 "punishment," other than the length of his sentence, which was
5 within the Guidelines range. See United States v. Negron, 524 F.3d
6 358, 361 (2d Cir. 2008) (per curiam) (holding that a district court
7 is not required to consider a rejected plea offer during
8 sentencing). Further, it was not an abuse of discretion to
9 sentence Kadir and Nur, who received a 180-month prison term,
10 differently because Nur was sentenced under a plea agreement that
11 included his undertaking to plead guilty to lesser charges and
12 admit his knowledge of the plot.

13 Finally, neither Kadir nor Defreitas offers a persuasive
14 argument that their sentences were substantively unreasonable. The
15 district court stated explicitly at both sentencing hearings that
16 it was mindful of the principle that each defendant's sentence
17 "must not be greater than necessary to achieve the goals of
18 sentencing." Defreitas App. at 1127 (Sentencing Tr.); see also
19 Kadir App. at 413 (Sentencing Tr.). The defendants were convicted
20 of conspiring to explode pipelines and jet-fuel tanks at JFK
21 Airport in order to kill countless Americans and other travelers,
22 disrupt air travel, and harm the American economy. The gravity of
23 the crimes for which they were convicted easily justifies the life

1 sentences that were imposed. Kadir's and Defreitas's sentences are
2 affirmed.

3 * * *

4 We have reviewed the remainder of Defreitas's and Kadir's
5 arguments and find them to be without merit.

6 **2. Nur**

7 Although Nur filed a notice of appeal, his counsel Daniel
8 Nobel moves for permission to withdraw pursuant to Anders, 386 U.S.
9 738. The government cross-moves to dismiss Nur's appeal as barred
10 by an appeal waiver.

11 Nobel's Anders motion and the government's motion to dismiss
12 Nur's appeal are granted. Upon review of the plea agreement and
13 the plea hearing transcript, we find that Nur's guilty plea was
14 knowing and voluntary. He also knowingly and voluntarily agreed
15 not to appeal his conviction or sentence if the district court
16 "impose[d] a term of imprisonment of 180 months or below." Nur
17 App. at 66 (Plea Agreement). Because Nur was sentenced to 180
18 months' imprisonment, his waiver bars the appeal. In any event, he
19 raises no non-frivolous issues on appeal. See United States v.
20 Gomez-Perez, 215 F.3d 315, 319, 321 (2d Cir. 2000).

21 **CONCLUSION**

22 For the foregoing reasons, the district court judgments are
23 AFFIRMED. Nur's appeal is DISMISSED, and his attorney's Anders
24 motion is GRANTED.