UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4251

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAIRO GUSTAVO AGUILERA SAGASTIZADO, a/k/a Coy, a/k/a Psiclogo,

Defendant - Appellant,

No. 24-4252

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MELVIN CANALES SALDANA, a/k/a Carlos Vigil Garay, a/k/a Carlos Bladimir, a/k/a Demente,

Defendant - Appellant,

No. 24-4273

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANILESTER ANDRADE RIVAS, a/k/a Mani, a/k/a Tandori, a/k/a Conejo, a/k/a Coqueto,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:21-cr-00260-LMB-1; 1:21-cr-00260-LMB-3; 1:21-cr-00260-LMB-8)

Argued: March 20, 2026 Decided: September 9, 2026

Before RICHARDSON, QUATTLEBAUM, and BERNER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Lana Manitta, LAW OFFICE OF LANA MANITTA, PLLC, Alexandria, Virginia; Mark Bodner, Fairfax, Virginia, for Appellants. John C. Blanchard, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee. **ON BRIEF:** Joseph D. King, KING CAMPBELL PORETZ & THOMAS, PLLC, Alexandria, Virginia, for Appellant Jairo Gustavo Aguilera Sagastizado. Matthew K. Hoff, Violent Crime & Racketeering Section, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Jessica D. Aber, United States Attorney, Jacqueline R. Bechara, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

These consolidated appeals follow a criminal trial for two murders carried out by members of the La Mara Salvatrucha gang, colloquially known as "MS-13." Appellants Jairo Gustavo Aguilera Sagastizado, Melvin Canales Saldana, and Manilester Andrade Rivas were each indicted and, following a six-day trial, convicted by a jury of committing various crimes, including racketeering, drug trafficking, and murder. Having considered Appellants' challenges, we affirm the jury's verdicts.

I.

We view the facts in the light most favorable to the prevailing party on a motion to suppress and at trial, here in both instances, the Government. *United States v. Sanders*, 107 F.4th 234, 240–41 (4th Cir. 2024). The appeals discussed in this opinion arise out of the first of two separate trials which both involved multiple defendants who were members of the Sitios Locos Salvatrucha (STLS), a local clique of MS-13. *See United States v. Contreras*, 149 F.4th 349, 360 n.2 (4th Cir. 2025) (citing cases that "detailed the history, structure, and purpose of MS-13"). We addressed the appeals stemming from the second trial in *United States v. Cristian Arial Arevalo Arias*, --- F.4th ---, 2026 WL 2603965 (4th Cir. Sep. 3, 2026). Because of the substantial overlap between both sets of appeals, we rely on our opinion in *Arevalo Arias* to supply the factual background.[1] We provide additional factual information adduced only at the first trial where relevant.

Appellants Jairo Gustavo Aguilera Sagastizado (Aguilera), Melvin Canales Saldana (Canales), and Manilester Andrade Rivas (Andrade) were members of MS-13, a transnational gang. Canales was the second-in-command of STLS. Aguilera and Andrade were low-ranking STLS members. Typically, members attain higher rank in STLS by committing violent acts—including murder—or engaging in other criminal activity. MS-13 maintains internal procedures designed to minimize the chances of apprehension by law enforcement. These internal procedures direct clique members to first identify rival gang members and receive approval to kill them. MS-13 members do not always follow these procedures, however, particularly when there is not enough time to identify a potential victim as a rival gang member. By murdering an individual from a rival gang, a clique member can demonstrate his willingness to carry out violent acts in order to help expand the clique's territory. This quest for territory and rank lies at the heart of the appeals before us.

[1] We recognize that *United States v. Cristian Arial Arevalo Arias*, --- F.4th ---, 2026 WL 2603965 (4th Cir. Sep. 3, 2026) concerns a separate trial and thus involves testimony not presented directly at the trial that gave rise to the appeals before us. The factual information provided in the background section of *Arevalo Arias* is drawn from testimony that is materially identical to the testimony relevant to the instant appeals, however. We therefore provide separate factual information only where necessary to reflect differences between the records. Our analysis of the issues relies solely on the record in these appeals.

The first trial concerned conspiracies to murder and the murder of two individuals, Antonio Smith and Eric Tate.

II.

Aguilera, Canales, and Andrade were each charged with various conspiracy and murder-related charges. The murder-related counts were charged as violent crimes in aid of racketeering activity (VICAR). "VICAR requires the prosecution to prove the crimes were committed as part of a criminal enterprise and pursuant to a pattern of racketeering activity." *Contreras*, 149 F.4th at 362 (citing 18 U.S.C. § 1959); *see also United States v. Keene*, 955 F.3d 391, 394 (4th Cir. 2020) (describing VICAR). We discuss only those convictions relevant to the appeals.

All three were charged with conspiracy to participate in a racketeering enterprise (Count One), in violation of 18 U.S.C. § 1962(d). The jury would later be asked to make a special sentencing finding in connection with a potential guilty verdict on Count One: whether the defendant aided and abetted the murder of either Smith or Tate as part of the racketeering conspiracy (Special Sentencing Finding One). Canales and Andrade were both charged with counts related to the murder of Tate: VICAR conspiracy to murder Tate, in violation of 18 U.S.C. § 1959(a)(5) (Count Nine), and VICAR murder of Tate, in violation of 18 U.S.C. § 1959(a)(1) and 2 (Count Ten). Aguilera was charged with counts related to the murder of Smith: VICAR conspiracy to murder Smith, in violation of 18 U.S.C. § 1959(a)(5) (Count Twelve), and VICAR murder of Smith, in violation of 18 U.S.C. § 1959(a)(1) and 2 (Count Thirteen).

Although Appellants were charged together with other co-defendants, the district court severed their cases. Aguilera, Canales, and Andrade were tried first. The trial lasted six days. After the trial, the Appellants moved for judgment of acquittal under Federal Rule of Criminal Procedure 29 or for a new trial under Federal Rule of Criminal Procedure 33. The district court denied their motions.

The jury returned verdicts of conviction for all three Appellants. Aguilera was convicted on all counts for which he was indicted. The jury also found proven as to Aguilera Special Sentencing Finding One—aiding and abetting murder as part of a conspiracy to participate in a racketeering enterprise. Canales was convicted on all but one count, and the jury found proven Special Sentencing Finding One. Andrade was convicted on all but two counts. Importantly for this appeal, Andrade was convicted on Count Nine, VICAR conspiracy to murder Tate, but acquitted on Count Ten, VICAR murder of Tate. The jury rejected Special Sentencing Finding One as to Andrade. After sentencing, Appellants timely appealed their convictions.

III.

Appellants raise a number of challenges. Most are individual, and one is joint. We begin by addressing the joint challenge to the remedy ordered by the district court to cure a *Brady* violation. We then turn to the individuals' challenges.

A. *Brady* Remedy

The district court struck the testimony of Abner Jose Molina Rodriguez (Molina) to remedy the prejudice caused by a *Brady* violation. Aguilera and Canales contend that this remedy was insufficient. They assert that the district court should instead have declared a mistrial or ordered a new trial, as they requested in post-trial motions.[2] *See* Fed. R. Crim. P. 33.

"Pursuant to *Brady*," the government violates a defendant's due process rights when it suppresses "evidence that is material and favorable to the defendant." *United States v. Savage*, 885 F.3d 212, 220 (4th Cir. 2018) (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). The Supreme Court later clarified that the rule in *Brady* applies to "evidence undermining witness credibility," known as *Giglio* evidence. *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (citing *Giglio v. United States*, 405 U.S. 150, 153–54 (1972)). The suppression of exculpatory evidence and impeachment evidence are equally egregious. *See United States v. Bagley*, 473 U.S. 667, 676–77 (1985). For the sake of brevity, we refer to both types of evidence as *Brady* evidence.

i. Background

Years before the trial, local law enforcement officers took into custody and interviewed Molina, an STLS member, about the double murder of Milton Beltran Lopez and Jairo Geremeas Mayorga. This double murder was one subject of the second trial. *See Arevalo Arias*, --- F.4th ---, 2026 WL 2603965 (4th Cir. Sep. 3, 2026). During the

[2] Canales's motion also requested a judgment of acquittal on the same ground.

interview, Molina told the officers that he committed the double murder alone. He was then arrested for this crime. Some time later, Molina recanted his story and provided a new account of the double murder that implicated Mario Antonio Guevara Rivera (Guevara), Cristian Ariel Arevalo Arias (Arevalo), and another STLS member. Molina told law enforcement that he initially took all of the blame because of "loyal[ty] to the clique." Parties' Joint Appendix (J.A.) 1283. When he recanted his story about the double murder, Molina also disclosed his participation in the murders of Tate and Smith.

As a cooperating witness for the Government in the first trial, Molina testified about his inconsistent statements to local law enforcement regarding the double murder. He also testified about the murders of Tate and Smith, and Canales's role in both.

Months before the trial in this case, the Government produced a police report regarding a call that local law enforcement received from a tipster, calling into question Molina's accounts of the double murder that was the subject of the trial at issue in *Arevalo Arias*, --- F.4th ---, 2026 WL 2603965 (4th Cir. Sep. 3, 2026).[3] According to the report, the tipster stated that Molina and another individual, who was not prosecuted in either trial, bragged that they alone committed the double murder. This tip contradicted both of Molina's previous accounts. Local law enforcement and the Government attempted

[3] The Government included this report in its pretrial disclosure of Jencks materials, rather than disclosing it with *Brady* material. Jencks materials are "any 'statement' of the witness related to the witness's testimony that is in the government's possession." *Savage*, 885 F.3d at 220 (citing 18 U.S.C. § 3500(b)).

to contact the tipster to no avail. In its pretrial disclosures, the Government did not provide the tipster's name or contact information.

After Molina testified in the first trial, Arevalo, a defendant in the second trial, asked the Government to provide contact information for the tipster. The Government then disclosed to defendants, for the first time, the tipster's name and contact information. Arevalo filed a sealed motion for specific relief based on the Government's failure to disclose the tipster's name and contact information. Appellants joined Arevalo's motion.

Before the first trial resumed, the district court held a hearing on the motion. It expressed concern that the tipster's identity, disclosed mid-trial, and the tipster's report, improperly disclosed as Jencks materials, could have seriously undermined Molina's credibility, which hinged largely on the "back and forth about whether he was involved in the double murder[.]" J.A. 1495. The district court viewed the failure to disclose as a *Brady* violation. To remedy the potential prejudice to the defendants, the district court instructed the jury to disregard Molina's testimony.[4]

After the trial, Aguilera and Canales moved for a new trial, arguing that striking Molina's testimony was not sufficient to cure the prejudice caused by the *Brady* violation. The district court denied their motions.

[4] The Government asserts that Aguilera and Canales invited any error from the purportedly insufficient remedy by requesting that the district court strike Molina's testimony. Aguilera contends, however, that he also requested that the district court declare a mistrial. We do not reach the Government's argument because we find that striking Molina's testimony sufficed to cure prejudice from any *Brady* violation.

ii. Analysis

We review the denial of a motion for a mistrial or new trial based on the Government's failure to timely disclose *Brady* evidence for abuse of discretion. *United States v. Wilson*, 624 F.3d 640, 660–61 (4th Cir. 2010). Belated disclosure of *Brady* evidence violates a defendant's due process rights when the timing of the disclosure prevents the defendant from making "effective use" of the evidence. *United States v. Sterling*, 724 F.3d 482, 511 (4th Cir. 2013) (quoting *United States v. Russell*, 971 F.2d 1098, 1112 (4th Cir. 1992)). In such cases, a district court is afforded discretion to impose sanctions to remedy and deter the *Brady* violation. *See id.* at 512 (reviewing "the district court's determination of whether to impose a sanction, and what sanction to impose" for abuse of discretion). A district court may still abuse its discretion by denying a motion for a mistrial or new trial "if the defendant can show prejudice; 'no prejudice exists, however, if the jury could make individual guilt determinations by following the court's cautionary instructions.'" *United States v. Saint Louis*, 889 F.3d 145, 155 (4th Cir. 2018) (quoting *United States v. Wallace*, 515 F.3d 327, 330 (4th Cir. 2008)).

The district court chose to remedy the *Brady* violation by instructing the jury to disregard Molina's testimony. This was not an abuse of discretion. Any prejudice resulting from the purported *Brady* violation was cured by the district court's jury instruction. Striking Molina's testimony eliminated any need to use the belatedly disclosed evidence to undermine his credibility. We presume, as we must, that the jury followed the curative instruction. *Richardson v. Marsh*, 481 U.S. 200, 206 (1987); *see Saint Louis*, 889 F.3d at 155 (affirming denial of mistrial and new trial based on curative jury instruction to disregard testimony of witness who made improper statements). Neither Aguilera nor Canales present a convincing argument to overcome this presumption or to otherwise demonstrate that the district court's jury instruction did not cure the prejudice caused by the *Brady* violation.

Accordingly, we conclude that the district court acted within its discretion by declining to grant Aguilera and Canales a mistrial or a new trial on the ground that striking Molina's testimony did not remedy the *Brady* violation.

B. Suppression of Evidence

We now move to the individuals' challenges, beginning with Canales's appeal of the district court's denial of his motion to suppress evidence. Canales contends that certain search warrants used to obtain evidence against him were not supported by probable cause and were insufficiently particularized. These challenged warrants were for three cell phones and two cloud-based data storage accounts.

We review the legal determinations underlying a district court's denial of a motion to suppress *de novo* and factual findings for clear error. *United States v. Bailey*, 74 F.4th 151, 156 (4th Cir. 2023). When reviewing the denial of a motion to suppress, we must construe the facts in the light most favorable to the prosecution. *United States v. Buster*, 26 F.4th 627, 630 (4th Cir. 2022).

This court recently held that the Fourth Amendment requires law enforcement to obtain a warrant before searching and seizing cloud-based data storage accounts and the digital files contained therein. *See United States v. Lowers*, 170 F.4th 134, 145–51 (4th Cir.

2026). A warrant "may not be issued unless probable cause is properly established and the scope of the authorized search is set out with particularity." *Kentucky v. King*, 563 U.S. 452, 459 (2011).

Probable cause for a search exists where "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Blakeney*, 949 F.3d 851, 859 (4th Cir. 2020) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). The Fourth Amendment requires a warrant to describe with sufficient particularity "the place to be searched, and the persons or things to be seized." *Id.* at 861 (quoting U.S. Const. amend. IV). A warrant is sufficiently particularized when it either identifies "the items to be seized by reference to a suspected criminal offense" or describes the items "in a manner that allows an executing officer to know precisely what he has been authorized to search for and seize." *Id.* at 863. Whereas the probable cause requirement "concerns the showing made by an officer *seeking* a search warrant, the particularity requirement is focused as well on the officer *executing* a warrant and ensures that the search 'will be carefully tailored to its justifications' rather than becoming a 'wide-ranging exploratory search[ ]' of the kind the 'Framers intended to prohibit.'" *Id.* at 861 (quoting *Maryland v. Garrison*, 480 U.S. 79, 84 (1987)).

Canales asserts that the warrants to search his cell phones and cloud-based accounts were unsupported by probable cause and lacked particularity. He concedes that the warrant affidavits provided probable cause for limited and discrete items. Still, he contends that the warrants themselves went further than the supporting affidavits by permitting a sweeping search of the entire contents of his cell phones and cloud-based accounts.

Though the challenged warrants authorized the search of data unrelated to the offenses for which law enforcement had probable cause, they did not authorize officers to seize all of the data searched. Rather, the warrants "identif[ied] the items to be seized by reference to [the] suspected criminal offense[s]." *United States v. Zelaya-Veliz*, 94 F.4th 321, 337 (4th Cir. 2024) (quoting *United States v. Cobb*, 970 F.3d 319, 327 (4th Cir. 2020)).

Canales's challenge, then, is to the two-step process that this court has endorsed for use by law enforcement to execute warrants for digital data. "This process—whereby the government first obtains [and searches] a large amount of account data [and] then seizes only the fruits, evidence, or instrumentalities of enumerated crimes—is crucial to the validity of social media warrants" and other warrants for digital data. *Id.* at 338. This two-step process "'confine[s] the executing officers' discretion' . . . by restricting them from rummaging through the [seized data] in search of unrelated criminal activities." *Id.* at 337 (quoting *Cobb*, 970 F.3d at 328). Although the challenged warrants authorized the Government "to search all the information" on Canales's cell phones and in his cloud-based accounts, the Government could only seize "the fruits, evidence, or instrumentalities of violations of enumerated federal crimes." *Id.* As this court has recognized, law enforcement reviewing "a large collection of items" may need to examine those items cursorily "to determine their relevance to the crime providing the basis for the search." *United States v. Williams*, 592 F.3d 511, 519–20 (4th Cir. 2010) (involving search of computer systems and digital storage media).

The two-step process does not obviate the particularity requirement under the Fourth Amendment. Digital data warrants that do not narrow the authorized search to "a relevant [period of] time connected to the crime being investigated," *Zelaya-Veliz*, 94 F.4th at 339 (quoting *United States v. McCall*, 84 F.4th 1317, 1328 (11th Cir. 2023)), may be "insufficiently particularized," *id*. Such "time-based" limitations are "the preferred method of limiting the scope of" digital data warrants, *McCall*, 84 F.4th at 1328, and are "both practical and protective of privacy interests," *Zelaya-Veliz*, 94 F.4th at 340 (quoting *McCall*, 84 F.4th at 1328); *see also McCall*, 84 F.4th at 1327 (discussing the alternative limitation of "narrowing the search based on the subject matter of the data"). Digital data warrants that cover an overly broad timeframe or do not include time-based limitations "raise[ ] a problem." *Zelaya-Veliz*, 94 F.4th at 340. The warrants here do not.

Because we conclude that the warrants were supported by probable cause and sufficiently particularized, we affirm the district court's denial of Canales's motion to suppress.

C. Sufficiency of the Evidence

Andrade and Canales each moved for judgment of acquittal, contending there was insufficient evidence to support their convictions. *See* Fed. R. Crim. P. 29. Specifically, Andrade challenges his conviction for VICAR conspiracy to commit the murder of Tate, Count Nine. Canales challenges his conviction for VICAR conspiracy to commit the murder of Tate, Count Nine, in addition to his conviction for the VICAR murder of Tate, Count Ten, and the jury's Special Sentencing Finding that Canales aided and abetted the murder of Tate as part of the conspiracy to participate in a racketeering enterprise.

We review *de novo* a district court's denial of a motion for judgment of acquittal. *United States v. Freitekh*, 114 F.4th 292, 308 (4th Cir. 2024). A conviction must be affirmed if the record contains "substantial evidence to support the verdict, after viewing all of the evidence and the inferences therefrom in the light most favorable to the [prosecution]." *Id.* (quoting *United States v. Murphy*, 35 F.3d 143, 148 (4th Cir. 1994)). "We must refrain from making any credibility determinations." *Contreras*, 149 F.4th at 368. We instead "assume that the jury resolved all contradictions in testimony in favor of the Government." *Freitekh*, 114 F.4th at 308 (quoting *United States v. Penniegraft*, 641 F.3d 566, 572 (4th Cir. 2011)). A defendant bears a "heavy" burden on a challenge to the sufficiency of the evidence "because reversal of the conviction is only appropriate 'where the prosecution's failure is clear.'" *United States v. Simmons*, 11 F.4th 239, 270 (4th Cir. 2021) (quoting *United States v. Foster*, 507 F.3d 233, 244–45 (4th Cir. 2007)).

To support a conviction for a VICAR-related offense, the Government must prove beyond a reasonable doubt that "the defendant committed the alleged crime of violence." *Id.* at 271 (citation omitted). Here, the indictment alleged that Andrade and Canales committed crimes under Virginia law. Thus, we look to Virgina law to determine whether the Government met its burden. *See id.*

i. Andrade

We begin with Andrade's challenge to his conviction for VICAR conspiracy to commit murder (Count Nine), in violation of Va. Code §§ 18.2-22 (conspiracy) and 18.2-32 (murder).

Andrade contends that the record contains insufficient evidence to sustain his conviction for VICAR conspiracy to murder Tate because Tate was not the subject of the conspiracy. In essence, he argues that there could be no conspiracy to murder Tate because the conspirators chose Tate randomly. The Government responds that Andrade and his co-conspirators conspired to kill *someone*, and that Tate became that *someone* at the point when Andrade and his co-conspirators acted together to murder him.

We agree with the Government. Evidence presented at trial supports the conclusion that Andrade and his co-conspirators began the night with the shared intent to murder some unidentified individual. That is sufficient to support a conviction for conspiracy to murder because the conspirators agreed "by some concerted action to commit an [unlawful] offense." *Cartwright v. Commonwealth*, 288 S.E.2d 491, 493 (Va. 1982) (citation omitted). Evidence also showed that Tate became the subject of that conspiracy when the conspirators identified him and acted in concert to murder him. *See Amato v. Commonwealth*, 352 S.E.2d 4, 9 (Va. Ct. App. 1987) ("[A] common purpose and plan may be inferred from a development and collocation of circumstances." (quoting *United States v. Godel*, 361 F.2d 21, 23 (4th Cir. 1966))). This was sufficient evidence upon which a jury could conclude that the conspirators "were engaged in a conspiracy to effect" the same objective. *Id*. (citation omitted).

Viewing the evidence in the light most favorable to the Government, we conclude that a rational jury could have found, beyond a reasonable doubt, that Andrade participated in a VICAR conspiracy to commit murder.

ii. Canales

We now turn to Canales's challenge to his convictions and the Special Sentencing Finding. As discussed, Canales was convicted of VICAR conspiracy to murder Tate (Count Nine), in violation of Va. Code §§ 18.2-22 and 18.2-32, and VICAR murder of Tate (Count Ten), in violation of Va. Code §§ 18.2-18 (aiding and abetting) and 18.2-32. The jury also made the Special Sentencing Finding, that Canales aided and abetted the murder of Tate, in violation of Va. Code §§ 18.2-18 and 18.2-32, as part of the conspiracy to participate in a racketeering enterprise.

Canales asserts that there was insufficient evidence to support his convictions and the Special Sentencing Finding. Specifically, Canales contends that the Government did not meet its burden to prove specific intent beyond a reasonable doubt. We first address his argument regarding the VICAR conspiracy to commit murder conviction and then discuss his argument about the aiding and abetting theory underlying his conviction for VICAR murder and the Special Sentencing Finding.

First, the VICAR conspiracy to murder Tate. Canales contends that he did not participate in an agreement to murder Tate because Tate had not been identified as a rival gang member in accordance with MS-13 procedures. Canales asserts that he approved only the murder of individuals identified as rival gang members. Further, Canales argues that because he was not present when Tate was murdered, he could not have formed an intent with his co-conspirators at the moment they found Tate and decided to murder him.

Under Virgina law, the crime of conspiracy requires "specific intent." *Gray v. Commonwealth*, 519 S.E.2d 825, 830 (Va. Ct. App. 1999), *aff'd*, 537 S.E.2d 862 (Va. 2000). "Specific intent is the intent to accomplish the precise criminal act that one is later charged with." *Winston v. Commonwealth*, 604 S.E.2d 21, 41 (Va. 2004). Specific intent "may be conditional," however, because "[a]n intent to kill, in the alternative, is nevertheless an intent to kill." *Simmons*, 11 F.4th at 271 (quoting *Holloway v. United States*, 526 U.S. 1, 9–11 (1977)) (applying Virginia law). We agree with the Government that Canales possessed the requisite specific intent to kill, even if conditioned on compliance with MS-13 procedures.

This court's decision in *United States v. Simmons*, 11 F.4th 239 (4th Cir. 2021), is illustrative. There, the defendants were convicted of VICAR attempted murder in violation of Virginia law. *Id.* at 271. One defendant, Antonio Simmons, had ordered "his men" to kill anyone who refused to renounce his allegiance to a rival gang leader. *Id*. Simmons's conditional order—directing the murder of anyone who did not renounce allegiance—sufficed to establish that Simmons possessed specific intent to kill anyone who met that condition. *Id.*

Similarly here, Canales directed the co-conspirators to follow MS-13 procedure to kill rival gang members only after obtaining permission to do so. The procedures make clear, however, that this requirement may be disregarded when there is insufficient time to ensure that a target is a rival or to obtain permission to kill. Based on evidence of this exception, "the jury could reasonably infer that" Canales and his co-conspirators "intended to kill" a person who satisfied that exception. *Id.* A reasonable jury could infer that Tate fell within this exception.

Furthermore, a jury could reasonably infer that Canales intended for someone to be murdered. The evidence of his intent is not negated merely because Tate was later determined not to be a rival and was identified only after the co-conspirators went out to find a target. Simply put, "conspiracy to commit a murder requires only an agreement to commit a future murder that may or may not ever occur." *Vasquez v. Dotson*, 899 S.E.2d 631, 635 (Va. 2024). Canales procured a gun for his co-conspirators to use the night of Tate's murder and did not withhold the gun until the co-conspirators identified a rival gang member. He gave them the gun knowing that they planned to search the streets looking for someone to kill. A rational jury could reasonably conclude that, by doing so, Canales "intended the immediate, direct, and necessary consequences of his voluntary acts." *Hancock v. Commonwealth*, 407 S.E.2d 301, 306 (Va. Ct. App. 1991).

Second, Canales asserts that there was insufficient evidence to support the jury's verdict finding him guilty of VICAR murder and to support the Special Sentencing Finding for aiding and abetting the murder of Tate. Here again, Canales contends that he did not possess the requisite intent to kill Tate. He further argues that he cannot be convicted as an accomplice in the murder of Tate, under a theory of aiding and abetting, when no one was convicted as the principal. Neither argument is convincing.

Under Virgina law, a defendant can be found guilty of aiding and abetting a murder when he either "commit[ted] some overt act, such as inciting, encouraging, advising, or assisting in the murder, *or* share[d] in [the perpetrator's] criminal intent." *Frye v. Commonwealth*, 345 S.E.2d 267, 280 (Va. 1986) (emphasis added) (describing two routes to aiding and abetting liability). Committing an overt act itself "demonstrates that [the accomplice] shares the criminal intent of the perpetrator," but the accomplice may still be convicted even if he "performs no overt act" where "he has previously communicated to the perpetrator that he shares the perpetrator's criminal purpose." *Rollston v. Commonwealth*, 399 S.E.2d 823, 825–26 (Va. Ct. App. 1991) (citation omitted).

Canales reiterates his argument that he cannot be found liable for aiding and abetting the murder of someone who had not been identified as a rival gang member, which Canales asserts that he would not have condoned. For the reasons discussed above, Canales possessed the requisite intent.

We also reject Canales's argument based on the inconsistent verdicts between the Appellants. Canales contends that because Andrade was acquitted of murdering or aiding and abetting the murder of Tate, Canales cannot be found guilty of the same crime. We disagree. "[A] defendant 'cannot challenge his conviction merely because it is inconsistent with a jury's verdict of acquittal'" as to another defendant on the same count. *United States v. Louthian*, 756 F.3d 295, 305 (4th Cir. 2014) (quoting *United States v. Thomas*, 900 F.2d 37, 40 (4th Cir. 1990)).[5]

[5] Canales's reliance on *Yates v. United States*, 354 U.S. 298 (1957), is misplaced. The holding in *Yates* hinges on an improperly charged crime. *Id.* at 311–12. There was no improperly charged crime here.

Next, in a similar vein, Canales asserts that his conviction as an accomplice to the VICAR murder of Tate cannot stand where no principal was convicted of the murder. Canales is correct that no accomplice can be convicted "unless the evidence establishes the *commission* of the offense by" the principal. *Sult v. Commonwealth*, 275 S.E.2d 608, 609 (Va. 1981) (emphasis added). The *conviction* of a principal, however, "is not a condition precedent to conviction of an" accomplice. *Dusenbery v. Commonwealth*, 263 S.E.2d 392, 393 (Va. 1980). Rather, an accomplice may be convicted when the record contains substantial evidence that someone—even an individual tried separately or not at all—acted as a principal to the crime. That is what occurred here.

The evidence demonstrated that more than one person shot Tate. In the first trial, the jury acquitted one of the shooters, Andrade, of the murder of Tate, which Canales attributes to Andrade's argument at trial that he shot Tate in self-defense. The evidence in the first trial also demonstrated that Arevalo—a defendant in the second trial—shot Tate. The evidence was such that the jury could reasonably have found that Arevalo murdered Tate by initiating the shooting even while concluding that Andrade acted in self-defense once the shooting started.

For these reasons, we conclude that, viewing the evidence in the light most favorable to the Government, a rational jury could have convicted Canales of VICAR conspiracy to commit murder and VICAR murder, and found proven the Special Sentencing Finding.

D. Jury Instructions

Finally, Andrade challenges the jury instructions for VICAR conspiracy to murder (Count Nine).[6] We review "a district court's decision to give a particular jury instruction for abuse of discretion, and review whether a jury instruction incorrectly stated the law" *de novo*. *United States v. McCabe*, 103 F.4th 259, 278 (4th Cir. 2024) (citation omitted).

In charging the jury, the district court defined "conspiracy to commit first- or second-degree murder" to require "that both the defendant and at least one other party to the agreement intended to commit first-degree murder *or second-degree murder*." J.A. 1665 (emphasis added). Andrade contends that this instruction was erroneous because, under Virginia law, there can be no crime of conspiracy to commit second-degree murder. As noted earlier, conspiracy is a specific intent crime under Virginia law. So too is first-degree murder, which requires a showing of premeditation. *Rhodes v. Commonwealth*, 384 S.E.2d 95, 98 (Va. 1989) (defining premeditation as specific intent to kill). Second-degree murder, conversely, does not require premeditation. *Id.*

Andrade argues, therefore, that a defendant cannot agree to participate in a conspiracy with the specific intent to commit a crime that itself does not require specific intent, like second-degree murder. As such, Andrade contends that the instructions provided by the district court could have misled the jury to convict him of VICAR

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[6] Andrade also contests the instructions for the Special Sentencing Finding. Because the jury declined to find the Special Sentencing Finding as to Andrade, we limit our discussion to the jury instructions for conspiracy to commit murder.

conspiracy to commit murder without finding that he had the specific intent required for that conspiracy under Virginia law. We are not convinced.

"[A] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge." *Cupp v. Naughten*, 414 U.S. 141, 146–47 (1973). Even assuming that this instruction misstated Virginia law, the district court's instructions to the jury, "construed as a whole, and in light of the whole record, adequately informed the jury" of the correct law. *United States v. Askew*, 98 F.4th 116, 121 (4th Cir. 2024) (quoting *Noel v. Artson*, 641 F.3d 580, 586 (4th Cir. 2011)). The record demonstrates that the jury was "adequately informed" of the "controlling legal principles." *Id.* (quoting *Noel*, 641 F.3d at 586). It cannot be said that the jury was misled or confused to Andrade's prejudice. *See id*.

The district court instructed the jury that a criminal conspiracy requires "that each defendant and at least one other person knowingly and deliberately arrived at an agreement or understanding that they . . . would violate some laws by means of a common plan or course of action[.]" J.A. 1656. The district court also instructed the jury that the defendant had to have "*intended to commit* first-degree murder or second-degree murder." *Id.* at 1665 (emphasis added). In charging VICAR conspiracy to commit murder for Count Nine, the district court instructed the jury that it must find that defendants "did knowingly combine, conspire, confederate and agree with each other . . . to murder" Tate. *Id.* at 1670. Finally, the district court instructed the jury that conspiracy to commit murder requires "that a defendant knowingly and unlawfully conspired with others to murder the particular decedent involved in those counts." *Id.* at 1672. These instructions, taken in their totality, adequately conveyed to the jury that it must find specific intent to commit murder. *See Askew*, 98 F.4th at 121.

Andrade cites this court's decision in *United States v. Mogavero*, 521 F.2d 625 (4th Cir. 1975), in support of his position that the jury instruction was erroneous. We disagree. There, a conviction was reversed because the jury instructions improperly placed the burden of proof on the defendant. *Id.* at 627–28. That error was not cured by the district court's instructions that the prosecution bears the burden to prove each element of the crime because "these instructions were all cast in the form of general statements as to the burden of proof." *Id.* at 628. In contrast, the district court here repeatedly and specifically instructed the jury that conspiracy to commit murder requires specific intent.

Accordingly, we decline to disturb the jury's verdict on the basis of the single instruction to the jury that "conspiracy to commit first- or second-degree murder" requires "that both the defendant and at least one other party to the agreement intended to commit first-degree murder or second-degree murder." J.A. 1665.

IV.

For the reasons set forth above, we affirm the Appellants' convictions.

AFFIRMED