

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued November 3, 2023

Decided November 21, 2024

BeforeTHOMAS L. KIRSCH II, *Circuit Judge*CANDACE JACKSON-AKIWUMI, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-1131

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ROMEO ABREGO,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 18-CR-20030-001

Michael M. Mihm,
Judge.

ORDER

Romeo Abrego was convicted of selling methamphetamine and now appeals two aspects of his sentencing. Seeing no error, we affirm.

I. FACTUAL BACKGROUND

Abrego distributed methamphetamine in and around Champaign County, Illinois. As part of his operation, Abrego worked with a dealer named James Risler from

December 2017 through March 2018.¹ Risler performed several roles for Abrego. For instance, he drove Abrego to drug sales, delivered methamphetamine to buyers at Abrego's request, and collected the proceeds of Abrego's drug transactions. Although Risler had some of his own customers, when he carried out tasks for Abrego, he did not know who to deliver drugs to or who to send money to until Abrego told him.

Abrego also sold drugs on his own. Two times, he sold methamphetamine to a confidential informant, which led to his prosecution in this case. The first time, in late January 2018, Abrego sold 6.96 grams. The second time, in early February 2018, he sold 14.075 grams. Later that month, following a house raid in a separate state case, Abrego was released on bond and fled to Texas.

While in Texas, Abrego continued to operate his drug-trafficking scheme in Illinois. He did so by mailing methamphetamine to Risler three to five times, again telling Risler where to take it, what Risler needed to sell, and how much money to send back. During this time, Abrego also directed Risler to share the shipments with another dealer named Emmanuel Hill.

Police officers stopped Risler at the end of March 2018 and found 151.2 grams of pure methamphetamine in his car.² No one disputes that these drugs came from Abrego because, from December 2017 onward, Abrego was Risler's sole source of methamphetamine.

II. PROCEDURAL BACKGROUND

Based on his sales to an informant in early 2018, a grand jury returned an indictment charging Abrego with two counts of distributing five grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). Abrego later

¹ We base our factual discussion on Risler's testimony at Abrego's sentencing hearing. In one part of his brief, Abrego seems to question Risler's credibility, as Risler testified in the hope of receiving a reduced sentence. Abrego also contends that, because the district judge who sentenced him was not the same judge who presided over the hearing at which Risler testified, the sentencing judge had only a limited capacity to assess Risler's credibility. If Abrego means to appeal the sentencing judge's credibility determination, we must reject his argument. We uphold credibility determinations unless the credited testimony is "inconsistent, implausible, or contradicted by extrinsic evidence," *United States v. Contreras*, 820 F.3d 255, 263 (7th Cir. 2016), and Abrego has not shown that any of those things are true in this case.

² Police weighed the drugs at 170 grams, but the Drug Enforcement Agency's laboratory analysis later determined that the drugs weighed 151.2 grams.

pleaded guilty, and the district court made two determinations at the sentencing hearing over his objections.

First, the district court found that Abrego's distribution of drugs through Risler was "relevant conduct" under U.S.S.G. § 1B1.3(a)(2). In the court's words, Risler was caught with "drugs that he received from [Abrego]" and he "distributed them ... as directed by [Abrego]." So the facts concerned "the same flow of drugs," "the same people," and "the same pipeline."

As a result, the court counted the 151.2 grams of methamphetamine seized from Risler toward Abrego's drug quantity. This led to a base offense level of 32 under the United States Sentencing Guidelines, which applies when a defendant is responsible for at least 150 grams of pure methamphetamine. U.S.S.G. § 2D1.1(c)(4).

Second, the district court enhanced Abrego's offense level by two under U.S.S.G. § 3B1.1(c) for his role as an "organizer, leader, manager, or supervisor" in the criminal activity. Abrego, the court explained, "was sending these shipments [to Illinois] from Texas ... with directions on how to distribute it and how to send the money back." This brought Abrego's offense level up to 34, but a two-level reduction for acceptance of responsibility brought it back down to 32. U.S.S.G. § 3E1.1(a).

Because the district court found that Abrego's offense level was 32 and his criminal history category was V, the Sentencing Guidelines recommended 188 to 235 months in prison. The court imposed a prison term at the bottom of that range—188 months on each count to run concurrently—to be followed by four years of supervised release.

III. DISCUSSION

On appeal, Abrego challenges both the drug quantity finding and the leadership enhancement.

We review for clear error a district court's decision to attribute certain drug quantities to a defendant through "relevant conduct." *United States v. Campbell*, 37 F.4th 1345, 1350 (7th Cir. 2022). When evaluating a district court's decision to apply a leadership enhancement, we review factual determinations for clear error, but we review de novo whether those facts supported the enhancement. *United States v. McGee*, 985 F.3d 559, 562 (7th Cir. 2021).

A. Drug Quantity Finding

At sentencing, district courts may consider not only the conduct underlying a defendant's conviction, but also "the broader sequence of events leading up to, and following, [that] unlawful act." *United States v. Burnett*, 37 F.4th 1235, 1238 (7th Cir. 2022). The Sentencing Guidelines reflect this idea through the "relevant conduct" provision, which places guardrails around which uncharged conduct district courts may take into account. *Id.* (citing U.S.S.G. § 1B1.3). The practical import for this case is that, when courts calculate a defendant's base offense level in a drug case, the Sentencing Guidelines instruct them to consider both the drugs that the defendant was convicted of selling *and* any drugs that were part of either a "common scheme or plan" or the "same course of conduct" as the offense of conviction. *United States v. Vaughn*, 722 F.3d 918, 930 (7th Cir. 2013) (quoting U.S.S.G. § 1B1.3(a)(2)).

Uncharged conduct is part of a "common scheme or plan" if it is "substantially connected" to the offense of conviction "by at least one common factor, such as common victims, common accomplices, common purpose, or similar [mode of operation]." U.S.S.G. § 1B1.3, cmt. 5(B)(i). Activity is part of the "same course of conduct" as the convicted offense if it is "part of a single episode, spree, or ongoing series of offenses." *Id.* at 5(B)(ii). Under either the common scheme or course of conduct inquiries, we look for "a strong relationship between the uncharged conduct and the convicted offense," taking into account the "similarity, regularity, and temporal proximity" between the two sets of events. *United States v. Hubbert*, 35 F.4th 1068, 1072 (7th Cir. 2022) (citation omitted).

Our prior decisions are instructive. In *United States v. Singleton*, for instance, the defendant was convicted of selling six grams of crack cocaine. 548 F.3d 589, 590 (7th Cir. 2008). We ruled that his weekly sales of crack cocaine to another person, which totaled five kilograms and stopped about two months before the charged offense, constituted relevant conduct. *Id.* at 592–53. Even though the uncharged activity "involved different participants and different amounts," it was relevant to the offense of conviction because it involved "the same principal, the same location, and the same drug." *Id.* at 592 (collecting cases). By contrast, in *United States v. McGowan*, we determined that the defendant's uncharged conduct of buying more than 500 grams of cocaine from a supplier was not relevant to his charged conduct of selling under ten grams of cocaine to an informant eight months later, by which time he had started obtaining drugs from a different supplier. 478 F.3d 800, 802–03 (7th Cir. 2007); *see also United States v. Draheim*,

958 F.3d 651, 660 (7th Cir. 2020) (holding that a “one-time order of a large amount of ice from a national distributor” was not relevant to “a small sale of street meth to a local customer”).

Here, Abrego contends that Risler’s conduct was not relevant to his offenses of conviction. As Abrego sees it, this case is like *McGowan* and *Draheim* because Abrego was charged with making two small sales of methamphetamine, whereas Risler possessed a distribution quantity, the two events concerned different people, quantities, purposes, and modes of operation. Abrego therefore maintains that the district court should not have included in his drug quantity the methamphetamine found on Risler. The government responds that the uncharged conduct was part of the same pattern as the charged conduct, like in *Singleton*. In support, the government points out that both the uncharged and charged conduct involved methamphetamine provided by Abrego and happened in the same area, two months apart, and in furtherance of Abrego’s ongoing drug trafficking enterprise.

The district court did not clearly err. True, Risler possessed more drugs than Abrego sold to the informant, and this fact cuts against the government. *See United States v. Ortiz*, 431 F.3d 1035, 1042 (7th Cir. 2005) (highlighting a difference in quantity involved in the charged and uncharged offenses). But the quantity difference is not dispositive. The district court held Abrego responsible for seven-and-a-half times the amount that he sold to an informant. Compare that to *Singleton*, in which we approved of the district court holding the defendant responsible for roughly 775 times the amount that he was convicted of selling. Other factors can overcome a quantity disparity, and here the district court reasonably concluded that they did, and we agree. Like *Singleton*, this case concerns the same person distributing the same type of drug in the same county at the same time—roughly two months out from the charged conduct. What is more, unlike in *McGowan* and *Draheim*, all the drugs here came through the same pipeline. Abrego supplied the methamphetamine bought by the informant and the methamphetamine found on Risler. As the district court recognized, Abrego plucked some of the drugs from his supply and sold them himself in Champaign County. Then he took other drugs from that same supply and gave them to Risler, telling him exactly how to sell them in the same area during the same timeframe. These findings permitted the court to determine that Risler’s conduct was linked to Abrego’s sales in a way that created an “ongoing series of offenses.” U.S.S.G. § 1B1.3, cmt. 5(B)(ii).

As we have often pointed out, relevant conduct is a “fearsome tool” because it lets prosecutors seek enhanced sentences based on actions that they never proved

beyond a reasonable doubt. *United States v. White*, 519 F.3d 342, 347 (7th Cir. 2008) (citation omitted). For that reason, we have urged prudence when relying on the relevant conduct guideline. *United States v. Tankson*, 836 F.3d 873, 882 (7th Cir. 2016). Today we reiterate those cautionary words. At the same time, we recognize that district courts have substantial discretion to make relevant conduct determinations. Because the court's decision here fell within the bounds of that discretion, Abrego has not shown that his base offense level was improper.

B. Leadership Enhancement

Abrego next contends that the district court should not have enhanced his offense level on grounds that he acted as “an organizer, leader, manager, or supervisor.” U.S.S.G. § 3B1.1(c). A leadership enhancement turns on the “degree of control and authority the defendant exercised over others.” *Vaughn*, 722 F.3d at 935. In making this determination, we consider the factors set out in Application Note 4 to § 3B1.1(c), including the defendant's “exercise of decision-making authority,” “degree of participation in planning ... the offense,” and “recruitment of accomplices.” U.S.S.G. § 3B1.1 cmt. n.4; *Vaughn*, 722 F.3d at 935.

In Abrego's view, although he worked with Risler and Hill in a supplier-dealer relationship, he never led or managed them. We disagree.

As the government argues, Risler and Hill were Abrego's subordinates, not his coequals. Even though Risler had some of his own clients, Abrego directed Risler to deliver drugs to certain people, told Risler how much to sell and how much money to collect, and controlled how Risler split shipments with Hill. In Risler's words, he drove Abrego around for “[a]nything that [Abrego] needed.” In addition, at one point, Abrego even had his fiancée drive another accomplice from Texas to Illinois in order to help Abrego distribute drugs.

Rather than merely fronting drugs to his dealers, Abrego “orchestrat[ed] or coordinat[ed] activities performed by others,” which made him a manager or supervisor. *United States v. Anderson*, 988 F.3d 420, 428 (7th Cir. 2021). As we have recognized, a supplier-dealer relationship is distinguishable from a relationship in which a supplier “told [his dealer] what to do and determined whether he had done it.” *Vaughn*, 722 F.3d at 936. The district court therefore properly applied U.S.S.G. § 3B1.1(c).

For these reasons, we AFFIRM the judgment of the district court.