NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 7, 2022
Decided December 5, 2022

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1563

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSE MENDOZA-CORTEZ,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 3:21-cr-00058-wmc-2

William M. Conley,
Judge.

O R D E R

After acting as an interstate drug courier one time (that federal authorities know about), Jose Mendoza-Cortez pleaded guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). He argued for a downward adjustment under § 3B1.2 of the Sentencing Guidelines for being a minor or minimal participant in a larger drug operation. The district court gave him the two-level reduction for playing a “minor” role and sentenced him to a below-guidelines term of 48 months' imprisonment. Mendoza-Cortez argues that the court should have subtracted two more offense levels for his “minimal” role. But the court did not clearly err in its factual findings, nor did it misinterpret the guideline. We affirm.

In February 2021, a Wisconsin state trooper pulled over a car driven by Gregorio Arreola Mendoza for a traffic violation. Mendoza-Cortez, the driver's half-brother, was sitting in the passenger seat. On that side of the car, the officer observed an open beer bottle and materials for rolling marijuana blunts; one blunt was in the center cup holder. The officer searched the car and, in the trunk, found a large box containing 20 gallon-sized plastic bags of powder methamphetamine and some loose methamphetamine crystals. The drugs weighed a total of 9,087 grams, or just over 20 pounds.

Police officers arrested and interviewed the brothers. Mendoza-Cortez revealed that he met Ramiro Quintero while working on a roofing crew the previous summer, and Quintero offered him the opportunity to make $1,000 on an interstate drug-courier job. Mendoza-Cortez enlisted Arreola Mendoza to drive. The men then traveled from Chicago to a grocery store parking lot in Saint Paul, Minnesota, to pick up the methamphetamine. There, an unidentified person placed a package in their trunk, and they drove off. "Handlers" then instructed them by phone to drive to a residential address in Columbus, Ohio, for drop-off. The brothers were pulled over en route and arrested in Wisconsin. During telephone calls to Mendoza-Cortez in jail, Quintero sought assurances that Mendoza-Cortez had not revealed anything, including Quintero's name, to law enforcement. Quintero also said that all the orders came from "higher up in Minnesota."

Mendoza-Cortez pleaded guilty to one count of possession with intent to distribute 500 or more grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). After assigning a base offense level of 34 because of the drug quantity, the PSR set a total offense level of 29, which included the two-level "safety valve" reduction under § 2D1.1(b)(18) and a three-level reduction under § 3E1.1(a)–(b) for accepting responsibility. Mendoza-Cortez's zero criminal-history points placed him in Category I. The resulting sentencing range was 87-108 months.

Mendoza-Cortez objected to the lack of a reduction under § 3B1.2. He argued that his limited knowledge of the scope of the drug trafficking activity, his scant involvement in planning and decision-making, and the relatively small amount of money he received for the single transport made him eligible for a four-level minimal participant reduction—or at least a two-level minor participant reduction.

At the sentencing hearing, the district court found Mendoza-Cortez eligible for a two-level minor participant reduction. In its analysis, the court explained that it lacked a full picture of the scope of the drug operation and could only compare Mendoza-Cortez to the known participants: Arreola, Quintero, and the person who met them in

Minnesota—not to handlers or higher-ups about whom it lacked reliable information. The court explained that the principal reason it was not awarding a four-level reduction was its concern that Mendoza-Cortez was "trusted with such a significant quantity of methamphetamine on what the Court [wa]s being asked to accept was [his] first and only such transport."

Under § 2D1.1(a)(5), any mitigating-role adjustment also requires that the base offense level be lowered, in this case from 34 to 31. Applying the minor role reduction and accepting the remainder of the PSR's calculations, the court therefore arrived at a total offense level of 24. This, combined with Mendoza-Cortez's criminal history category of I, led to a guidelines range of 51-63 months.

After weighing the sentencing factors under 18 U.S.C. § 3553(a), including Mendoza-Cortez's history and characteristics and the need to protect the community from drugs, the court imposed a below-guidelines sentence of 48 months without a term of supervised release. In so doing, the court considered Mendoza-Cortez's explanation that he agreed to the deal as a means of supporting his sister, who had been hospitalized in Mexico due to pregnancy complications, and his newborn niece, who had sepsis and required costly treatment.

On appeal, Mendoza-Cortez challenges the district court's decision to apply a two-level minor role reduction instead of a four-level minimal role reduction. He argues that, as a matter of law, the court's reasoning ran afoul of the Guidelines and that the factual basis for its decision is also erroneous. We review the applicability of the guideline de novo, and any underlying factual findings for clear error. *United States v. Guzman-Ramirez*, 949 F.3d 1034, 1037 (7th Cir. 2020); *United States v. Leiskunas*, 656 F.3d 732, 739 (7th Cir. 2011).

Section 3B1.2 of the Sentencing Guidelines provides a gradation of reductions for a defendant whose role "makes him substantially less culpable than the average participant." § 3B1.2, cmt. n.3(A). The burden is on the defendant to show by a preponderance of the evidence that he meets this standard. *United States v. Turnipseed*, 47 F.4th 608, 615–16 (7th Cir. 2022). A "minimal" participant, who receives the maximum four-level reduction, is one who is "plainly among the least culpable of those involved in the conduct of a group." § 3B1.2 cmt. n. 4. A hallmark of a minimal participant is a "lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others." *Id.* A "minor" participant, who receives a two-level reduction, is someone "who is less culpable than most other participants" but "whose role could not be described as minimal." § 3B1.2 cmt. n. 5. We have previously held that couriers like Mendoza-Cortez do not automatically merit mitigation

adjustments. *See United States v. Garcia*, 580 F.3d 528, 538–39 (7th Cir. 2009). When evaluating the role a courier played, we must compare him to the average participant in the offense rather than the leaders. *See Turnipseed,* 47 F.4th at 615–16. (What makes this case somewhat unusual is that Mendoza-Cortez was not charged as part of a conspiracy, and so there is little evidence in this record about the nature and scope of the trafficking operation.)

Mendoza-Cortez principally argues that the court made legal errors interpreting § 3B1.2. He first contends that, in denying the four-level reduction, the court ran afoul of the guideline's instruction that a lack of knowledge about the scope of the operation suggests that someone is a minimal participant. He says that, contrary to this advice, the court held his lack of "information to proffer about the higher-level players" against him. But that is not how the court explained it; rather, it suggested that, if it had been made aware with more certainty of a larger operation, Mendoza-Cortez's role might have seemed more insignificant in relation to other participants (including higher-ups). But it was confined to the handful of known participants in this individual transaction.

Mendoza-Cortez next suggests that the court was improperly influenced by how his offense was charged and therefore did not properly balance the non-exhaustive list of factors laid out by the Sentencing Commission in § 3B1.2 cmt. n.3(C). But the court did not make the mistake of suggesting that a minimal-role reduction is "available to only those charged with conspiracy." Rather, it stated that, based solely on what was known about this single drug deal, Mendoza-Cortez was eligible only for a two-level reduction. And although Mendoza-Cortez argues that his minimal role in "planning the crime" was "the relevant consideration," this is misleading. The guideline expressly lists, as factors that courts should weigh, both planning and the extent of the defendant's participation in the commission of the crime.

Mendoza-Cortez's final legal argument is that the court incorrectly concluded that a greater reduction could not apply because he was just as culpable as his half-brother. But the court did not base its decision on a shared degree of culpability. It observed that, in this transaction, Mendoza-Cortez did not "appear substantially less culpable than" his brother or the person who met them in Minnesota. That inquiry is part of the threshold analysis required by the guideline, and the court did not make the mistake of assuming that a defendant cannot get the reduction if he had the same level of culpability as someone else. § 3B1.2, cmt. n.3(A); *see United States v. Hunte*, 196 F.3d 687, 694 (7th Cir. 1999).

Overall, Mendoza-Cortez's arguments about the court's purported legal errors in interpreting the guideline overlook what the district court identified as its "principal

reason" for denying the extra two levels: "the fact that defendant and his brother were trusted with such a significant quantity of methamphetamine." In other words, the court inferred from the enormous drug quantity that Mendoza-Cortez had some level of trust within the operation and that this was probably not a single isolated transfer. Considering the degree of trust between Mendoza-Cortez and the rest of the operation was proper under the Guidelines. *See Guzman-Ramirez*, 949 F.3d at 1038.

With respect to that reason, however, Mendoza-Cortez contends that the court's rationale was based on speculation or facts that are contradicted by the record. The court's conclusions of fact about a defendant's level of culpability are reviewed only for clear error because "the sentencing court is in the best position to evaluate the defendant's role in the criminal activity." *Leiskunas*, 656 F.3d at 739.

Here, Mendoza-Cortez does not demonstrate that there was any error in the district court's inference about the degree of trust between Mendoza-Cortez and Quintero. That inference was grounded exclusively in the large drug quantity, which is well-supported by the record. An inference from known facts is permissible and not the same as speculation. *See United States v. Minhas*, 850 F.3d 873, 878 (7th Cir. 2017). And we have frequently said that district judges have "great latitude in making factual determinations" and can use their experience and common sense in drawing such inferences. *United States v. Sunmola*, 887 F.3d 830, 837 (7th Cir. 2018).

The other claimed factual errors that Mendoza-Cortez cites are not borne out. For example, Mendoza-Cortez suggests that the court erred by comparing him only to the four known participants in the scheme because the record makes clear more people were involved. He points to references to "higher-ups" and "handlers," suggesting a larger operation. But as the court properly explained, without specific details about who the "higher-ups" or other members of the operation were, it could compare Mendoza-Cortez's role only to roles of others known and identified in the record. Thus, the court did not erroneously find that there were only four participants; it determined that it had sufficient reliable information about just four. Moreover, the court appears to have given Mendoza-Cortez the benefit of the doubt, because it expressed uncertainty about whether he was really "substantially less culpable" than the average participant but nevertheless granted a two-level reduction.

AFFIRMED