

NONPRECEDENTIAL DISPOSITION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 January 30, 2024
Decided March 4, 2024

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1138

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ALLEN KING,
Defendant-Appellant.

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

No. 21-CR-139-1-JPS

J. P. Stadtmueller,
Judge.

ORDER

Allen King appeals the district court's application of a four-level enhancement for his leadership role in an arson conspiracy. He argues that the district court did not support its application of the enhancement with adequate factual findings. We agree with King, and accordingly, we vacate his sentence and remand for resentencing.

Background

King was one of a dozen friends who traveled from Minnesota to Kenosha, Wisconsin, during rioting in 2020 triggered by the police shooting of Jacob Blake. Capitalizing off the riot activity in Kenosha, the group set fire to a bar, causing an explosion. The friends then fled across the street to a CVS, where they stole pharmaceutical drugs. A year later, law enforcement arrested and questioned one of the group members, David Garner, who characterized King as the group's "big fish." Garner even accused King of threatening him at gunpoint to start the bar fire. This accusation, however, could not be corroborated by surveillance footage from the bar. The next day, law enforcement also interviewed an unindicted co-conspirator, "K.S.," who stated that King encouraged the group to travel to Kenosha and sold looted items on Facebook, taking a cut of the profits. Around that same time, King posted a video on Facebook stating that he was "the ringleader" of the group.

King was then located by officers from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and arrested in Minnesota. He later was indicted and pleaded guilty to conspiracy to commit arson. *See* 18 U.S.C. § 844(i), (n).

The probation officer prepared a presentence report and recommended a four-level enhancement under U.S.S.G. § 3B1.1(a), based on King's role as the organizer or leader of an offense involving five or more participants. As the probation officer explained, King encouraged the rioting activities and pushed the group to commit arson. The enhancement boosted King's total offense level to 25, which, together with his criminal history category at VI, yielded a guidelines range of 110 to 137 months in prison.

King prepared a sentencing memo contesting the application of the enhancement. He objected to the characterization that he was the organizer or leader. He also questioned Garner's credibility, noting the government's own acknowledgement that Garner's statement contained "inaccuracies." Additionally, King maintained that he could not have led the group because he had "impaired executive functioning" (a brain injury that results in an inability to learn from and adapt to environmental or behavioral cues) and that it was "nonsensical" for anyone to accept his suggestion that he was the "ringleader."

As relevant to this appeal, the probation officer prepared an addendum to the PSR and refuted King's objection to the application of the § 3B1.1(a) enhancement. The

officer stated that King was responsible for recruiting and encouraging his friends to loot. Further, King's belief that he acted as the ringleader, as corroborated by his friends, "justif[ie]d the imposition of the recommended enhancement." And even with diminished mental capacity, King was capable of "leading an unsophisticated operation with other individuals who were prone to suggestion." The officer also attached investigation reports from the Bureau of Alcohol, Tobacco, Firearms, and Explosives, which recounted the statements of Garner and K.S., including K.S.'s assertion that King took a cut of the profits.

The district court rejected King's arguments, concluding that "Mr. King's conduct and his own personal assessment [of his role] and why it is he found himself involved in these terribly destructive acts leave the Court to the inescapable conclusion that the Probation Department got it right in imposing the enhancement under the egis of [§ 3B1.1(a)]." The court imposed a below-guidelines sentence of 90 months in prison. Without the four-level enhancement, King would have faced a guidelines range of 77 to 96 months' imprisonment. The district judge did not indicate whether he would impose the same sentence in the absence of the four-level enhancement.

Analysis

King argues that the district court did not make sufficient factual findings to apply the leadership enhancement under § 3B1.1(a). We review for clear error the district court's factual determinations underlying the application of the guidelines—specifically, the factual determination regarding King's role as a leader or organizer of the arson conspiracy. *United States v. Jones*, 56 F.4th 455, 493 (7th Cir. 2022). Although this standard is lenient, the district court must provide enough detail for us to know which facts it relied upon to apply the enhancement. *See United States v. Robinson*, 62 F.4th 318, 321 (7th Cir. 2023); *United States v. Briggs*, 919 F.3d 1030, 1033 (7th Cir. 2019).

Section 3B1.1(a) provides for a four-level increase to the offense level "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." Application Note 4 to § 3B1.1(a) clarifies the meaning of "leader" or "organizer," explaining that titles like "kingpin" or "boss" are not controlling but that the sentencing court may consider titles, along with other factors like "the recruitment of accomplices, the claimed right to a larger share of the

fruits of the crime, the degree of participation in planning or organizing the offense ... and the degree of control and authority exercised over others.”

The court’s explanation for applying the enhancement was terse. The court supported its decision with only general references to King’s “conduct” and the “personal assessment [of King’s role]” —presumably a nod to King’s self-proclaimed “ringleader” comment on Facebook. The court ended its explanation by stating that the probation officer “got it right.”

Those remarks do not adequately substantiate why the four-level enhancement is warranted. The court did not specify what “conduct” it relied upon to find that King was a leader. It did not, for instance, hint at whether it credited Garner’s statements. Nor did it address whether it gave any weight to K.S.’s statement about King’s taking a larger cut of the proceeds. As for the court’s reliance on King’s “personal assessment” as ringleader, titles alone do not determine whether the enhancement applies. *See* U.S.S.G. § 3B1.1(a), cmnt. n.4; *United States v. Volpendesto*, 746 F.3d 273, 298 (7th Cir. 2014). Further explanation of the court’s reasonings is required to substantiate the application of the enhancement.

For these reasons, we VACATE King’s sentence and REMAND for resentencing.