

In the
United States Court of Appeals
For the Seventh Circuit

No. 22-1472

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PHILLIP ROBINSON,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 19-cr-00933-2 — **John J. Tharp, Jr.**, *Judge.*

ARGUED FEBRUARY 8, 2023 — DECIDED MARCH 9, 2023

Before FLAUM, SCUDDER, and ST. EVE, *Circuit Judges.*

FLAUM, *Circuit Judge.* Phillip Robinson appeals the district court's application of a sentencing enhancement following a jury trial. Primarily, he raises the familiar challenge that the Constitution prohibits using acquitted conduct for sentencing purposes. He also argues that the district court's factual findings do not support its application of the enhancement. We affirm on both fronts.

I. Background

In late 2019, Robinson agreed to let an acquaintance, Jose Solorzano, stay at his home in Chicago. Robinson apparently knew that Solorzano was there to sell cocaine; the two frequently exchanged coded text messages about potential deals. One day, Robinson drove to Indiana to pick up Solorzano after an ill-fated transaction had ended with Solorzano getting robbed. Robinson later texted Solorzano, “You should have taken me to watch your back.”

Soon afterwards, Solorzano arranged a deal with an undercover officer. Robinson agreed to drive him, and upon their arrival, authorities approached the vehicle to arrest them. One officer said that, during the arrest, he saw his colleague pull a handgun from Robinson’s waistband. The gun was loaded. In addition, the officer who interrogated Robinson following the arrest said that Robinson told him he had brought the gun to avoid being robbed.

Robinson went to trial. The jury found him guilty of conspiring to possess cocaine with intent to distribute and of possessing a firearm as a felon. On the other hand, it found him not guilty of possessing a firearm “in furtherance of” the conspiracy. *See* 18 U.S.C. § 924(c)(1)(A).¹ The government then sought an enhancement to Robinson’s sentence for the felon-in-possession conviction on the grounds that he possessed a firearm “in connection with” the cocaine conspiracy. *See* U.S.S.G. § 2K2.1(b)(6)(B). The court applied the enhancement over Robinson’s objection, and Robinson appealed.

¹ The jury also found Robinson not guilty of possessing cocaine with intent to distribute.

II. Discussion

Robinson first contends that the district court's use of acquitted conduct to enhance his sentence violated his constitutional rights. Second, he argues that the district court did not make sufficient factual findings to apply the enhancement.

A. Use of Acquitted Conduct

We review a defendant's constitutional challenge to his sentence de novo. *United States v. Castro-Aguirre*, 983 F.3d 927, 942 (7th Cir. 2020). Robinson objects to the district court's conclusion during sentencing that he possessed a firearm "in connection with" the cocaine conspiracy. See U.S.S.G. § 2K2.1(b)(6)(B). The jury had already found him not guilty of possessing a firearm "in furtherance of" the conspiracy. See 18 U.S.C. § 924(c)(1)(A). According to Robinson, the Constitution does not permit the district court's use of acquitted conduct for sentencing purposes.

The Supreme Court says otherwise. In *United States v. Watts*, it endorsed this practice "so long as [the acquitted] conduct has been proved by a preponderance of the evidence." 519 U.S. 148, 155–57 (1997).² Time and again, we have relied on *Watts* to reject the same argument Robinson raises now. See, e.g., *United States v. Jones*, 56 F.4th 455, 514 (7th Cir. 2022);

² Even assuming *Watts* is best read as confined to the Fifth Amendment's Double Jeopardy Clause, see *United States v. Booker*, 543 U.S. 220, 240 & n.4 (2005), litigants relying on a different constitutional provision must "construct an argument" that does not "war with the logic of *Watts* and 'miss[] the distinction between elements of an offense and facts relevant to sentencing.'" *United States v. Waltower*, 643 F.3d 572, 577 n.2 (7th Cir. 2011) (alteration in original) (quoting *United States v. Vaughn*, 430 F.3d 518, 526 (2d Cir. 2005)).

United States v. Gan, 54 F.4th 467, 482–83 (7th Cir. 2022); *United States v. Bravo*, 26 F.4th 387, 399 (7th Cir. 2022); *United States v. McClinton*, 23 F.4th 732, 735 (7th Cir. 2022).

None of the cases Robinson cites convinces us to change course. To be sure, the Supreme Court may someday revisit *Watts*. See *McClinton*, 23 F.4th at 735. The most we can offer under currently controlling precedent, however, is that Robinson has preserved his argument for further review.

B. Findings Supporting Enhancement

Robinson next argues that the district court did not make sufficient factual findings to apply the enhancement. Again, the court had to determine whether Robinson possessed a firearm “in connection with” the conspiracy to possess cocaine with intent to distribute. See U.S.S.G. § 2K2.1(b)(6)(B); see also *id.*, cmt. n.14(A) (describing the inquiry as whether “the firearm ... facilitated, or had the potential of facilitating,” the cocaine conspiracy).

We review for clear error. *United States v. Clinton*, 825 F.3d 809, 811 (7th Cir. 2016).³ Although this standard is lenient, the district court must provide enough detail for us to “know what [it] thought” about the facts supporting the enhancement. See *United States v. Briggs*, 919 F.3d 1030, 1033 (7th Cir. 2019). If the court’s findings do not illuminate a link between the gun and the drug felony, we will remand. See *Clinton*, 825 F.3d at 813 (“[W]e have essentially no fact findings at all by the district court relevant to this issue.”); *Briggs*, 919 F.3d

³ The parties dispute whether Robinson forfeited this issue; if he did, plain-error review would apply. *United States v. Foy*, 50 F.4th 616, 622 (7th Cir. 2022). We need not resolve this disagreement because Robinson’s challenge would fail even if he preserved it.

at 1032 (“[T]he district [court] never made any findings about how Briggs’s felony cocaine possession was connected to his firearms.” (emphasis omitted)).

Here, the district court observed that “Robinson volunteered to provide security for ... Solorzano after Solorzano was robbed” in Indiana. The court also noted that, on the day Robinson drove Solorzano to the prospective drug deal with the undercover officer, he had a loaded “firearm on his person.” It surmised that Robinson had brought the gun “to provide assurance that the transaction would take place on the terms expected” — that is, to avoid “being robbed.”

This reasoning is far from clear error. We have no doubt about the district court’s rationale for connecting the gun to the cocaine conspiracy, and the record supports its findings. Application of the enhancement was thus appropriate.

III. Conclusion

For these reasons, we *AFFIRM* the district court’s decision.