NONPRECEDENTIAL DISPOSITION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 25, 2023
Decided February 24, 2023

Before

DIANE S. SYKES, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1797

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THOMAS BARFIELD,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:18-CR-00403(1)

Charles R. Norgle,
Judge.

O R D E R

Thomas Barfield pleaded guilty to participating in drug-trafficking and money-laundering conspiracies operating in the North Lawndale neighborhood on Chicago's west side. He was sentenced to concurrent prison terms of 27 years and 20 years on the two conspiracy counts. On appeal he challenges the sentence, raising three claims of error: the judge (1) failed to make factual findings on a contested issue about the quantity of heroin attributable to him; (2) failed to adequately explain the 27-year prison sentence on the drug-conspiracy count; and (3) erroneously imposed a 20-year term on the money-laundering count when the statutory maximum is 10 years.

Barfield is correct that the judge failed to make the necessary factual findings to resolve the drug-quantity dispute. And the government concedes the error on the money-laundering sentence. We therefore remand for resentencing.

I. Background

For four months in 2018, Thomas Barfield oversaw the distribution of heroin and fentanyl in the North Lawndale neighborhood on Chicago's west side, primarily from a sale spot located at the intersection of Homan Avenue and Douglas Boulevard. The heroin was sold in "bundles" of approximately 50 grams, sometimes mixed with fentanyl. Each bundle yielded about $1,000 in profit. Barfield was charged alongside nine codefendants who sold drugs with him, and just before trial he pleaded guilty to two counts: conspiracy to possess with intent to distribute heroin and fentanyl, 21 U.S.C. §§ 841(a)(1), 846, and conspiracy to launder drug proceeds, 18 U.S.C. § 1956(h). In his plea agreement, Barfield admitted that he and his codefendants distributed "at least one bundle of heroin each day" and that in total he was accountable for the distribution of at least 7.6 kilograms of heroin, 547 grams of which contained fentanyl.

At sentencing the parties disputed the total quantity of heroin sales attributable to Barfield. (The amount of fentanyl was undisputed.) The presentence report ("PSR") recommended that he be held accountable for distributing 16 kilograms of heroin. The probation officer had adopted this quantity from the government's version of the offense, which drew on a codefendant's grand-jury testimony as well as statements contained in the plea agreements of eight codefendants. Critical to the government's calculation was its conclusion that two bundles of heroin were sold at Barfield's drug spot in North Lawndale each day of the four-month conspiracy. Barfield objected that the 16-kilogram calculation was not supported by reliable evidence. He contended that for each day of the conspiracy, he was responsible for only one bundle of heroin, which, when combined with other smaller quantities that were not in dispute, amounted to no more than 10 kilograms of heroin. A 10-kilogram quantity of heroin would yield a base offense level of 32—two levels lower than the offense level calculated in the PSR.[1]

The judge summarily overruled Barfield's objection to the heroin quantity proposed in the PSR, saying only that there was "enough information and reliable

[1] Whether the total quantity of heroin was 16 or 10 kilograms would not bear on his Guidelines range. In either case Barfield would face a range of 360 months to life.

evidence" to support the 16-kilogram finding. The judge sentenced Barfield to 27 years in prison on the drug-conspiracy count and 20 years on the money-laundering count, to be served concurrently.

II. Analysis

Barfield challenges his sentence, arguing that the judge (1) failed to make factual findings on the disputed issue of the amount of heroin attributable to him; (2) failed to adequately justify the 27-year sentence on the drug-conspiracy count; and (3) mistakenly imposed a 20-year sentence on the money-laundering count when the statutory maximum is 10 years. He is correct on the first and third points.

Judges must support their rulings on factual disputes at sentencing with findings on the record. FED. R. CRIM. P. 32(i)(3)(B); *United States v. Brown*, 716 F.3d 988, 994 (7th Cir. 2013). This rule "protects a defendant's right to be sentenced on the basis of accurate information and provides a record of the disposition and resolution of controverted facts in the PSR." *Brown*, 716 F.3d at 993. This requirement is not onerous; judges need only make an adequate record to enable appellate review. *United States v. Durham*, 766 F.3d 672, 686 (7th Cir. 2014).

Barfield raised and developed his objection to the heroin quantity in the PSR, so the judge was required to make factual findings to resolve the dispute. The government argued that it presented ample evidence that two bundles of heroin (containing 50 grams each) were distributed daily at Barfield's drug spot over the 124 days the conspiracy lasted, amounting to 12.4 kilograms of heroin sales (100 grams x 124 days). (Additional undisputed sale amounts boosted the total to 16 kilograms.) The government's evidence included identically worded admissions in eight codefendants' plea agreements that two bundles were distributed daily. The government also relied on one codefendant's grand-jury statement that Barfield's drug spot yielded $1,000 to $3,000 per day of the conspiracy.

Barfield challenged the government's evidence as unreliable and uncorroborated. He argued that he was responsible only for a single bundle daily, amounting to 6.2 kilograms of heroin sales (50 grams x 124 days). He supported this position by producing notes from law-enforcement interviews with two codefendants suggesting that only one bundle was distributed at Barfield's drug spot each day.

The judge made no factual findings on the dispute about heroin quantity, and his ruling is otherwise insufficient to enable appellate review. The two-sentence ruling provides little insight into his reasoning:

> There is enough information and reliable evidence to support a finding that with respect to heroin, approximately 16 kilograms were involved as part of the conspiracy, and that with respect to fentanyl, 547 grams approximately over the course of the conspiracy, some of which was being sold on a day-to-day basis. And there was obviously[—]in order to carry out the activities[—]an inventory maintained in the premises controlled by Mr. Barfield. [2]

This ruling mentions the "inventory maintained in the premises controlled by Mr. Barfield," but the undisputed amount of heroin in inventory was only 300 grams. Significantly, the judge did not address the key dispute over the number of daily heroin bundles (one or two) that could be attributable to Barfield—a quantity that totals 6 of the 16-kilogram quantity ultimately assessed against him.

Judges need not "belabor the obvious" when ruling on factual disputes at sentencing, but they are required to explain why the government's proffered evidence is accurate and reliable. *United States v. Jones*, 56 F.4th 455, 510 (7th Cir. 2022). The government has the burden to prove by a preponderance of the evidence that uncharged drug quantities are attributable to the defendant. *United States v. Gibbs*, 26 F.4th 760, 765 (7th Cir. 2022). When a defendant presents reasons to question the reliability of the government's evidence, judges should explain why they find that evidence reliable. *Jones*, 56 F.4th at 510; *see United States v. Helding*, 948 F.3d 864, 871 (7th Cir. 2020) (remanding because the district court did not "take some step to ensure that the CI-provided [drug-quantity] information ha[d] a modicum of reliability"); *United States v. Garrett*, 757 F.3d 560, 573 (7th Cir. 2014) (remanding because the district court did not describe the reliable evidence and methods used to estimate a drug quantity); *United States v. McEntire*, 153 F.3d 424, 437 (7th Cir. 1998) (remanding because the district court did not show that it made "a sufficiently searching inquiry into the

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[2] The last sentence of this quotation (taken from the sentencing transcript) is confusing. Our best guess is that the judge may have paused after the words "obviously" and "activities" as if he were making a parenthetical remark. We believe that is the most natural reading, given the judge's preceding line of questions about Barfield's drug "inventory."

contradictory [drug-quantity] evidence"). Here, despite Barfield's specific objections to the reliability of the government's evidence (i.e., that the government's sources were biased or the evidence was not corroborated), the judge did not explain what evidence he credited or why he deemed the evidence reliable.

Adding to our uncertainty about the judge's drug-quantity ruling are a series of exchanges at the sentencing hearing suggesting confusion about basic facts of the case. At different points in the hearing, the judge made comments that cast doubt on his understanding of what was factually in dispute. For example, he seemed unclear that the parties' disagreement involved heroin and not fentanyl.[3] At another point he seemed to have a badly exaggerated sense of the amounts of heroin that were in dispute.[4] In another exchange he dwelled on the quantity of fentanyl—again, an issue not in dispute.[5] These passages in the transcript give us pause about his familiarity

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[3] THE COURT: What is your definition of a bundle?
GOVERNMENT: A bundle is … 50 grams … .
THE COURT: 50 grams of fentanyl?
GOVERNMENT: Heroin.

[4] THE COURT: Your representation and the probation department's figure is 124 kilograms of heroin and 546 grams of fentanyl, is that correct?
…
THE COURT: How many kilograms of heroin?
GOVERNMENT: 12.4 kilograms is what --
THE COURT: 12.4, not 124?
…
[The government delayed its response, so the judge asked the probation officer to step in. The probation officer told the judge that the relevant quantity was 12.4 kilograms.]
THE COURT: So the 124 is actually 12.4?
PROBATION OFFICER: The 12.4 was the initial position. And then it was increased somewhat. And the 16.039 is what we listed in the table.

[5] THE COURT: All right. And with respect to fentanyl, 546?
PROBATION OFFICER: 547.
THE COURT: 547 grams?
PROBATION OFFICER: Yes, yes.
THE COURT: Not kilograms?

with parts of the record fundamental to the drug-quantity ruling—thus calling into question whether his inquiry into the reliability of the evidence was adequate.

The government argues that any error in the court's drug-quantity finding was harmless because the Guidelines range would be the same using the 10-kilogram heroin quantity that Barfield proposes. Though the Guidelines range would not change, the error is not harmless because the government has the burden to prove that regardless of the error, the judge would have imposed the same sentence. *See United States v. Asbury*, 27 F.4th 576, 581 (7th Cir. 2022); *United States v. Abbas*, 560 F.3d 660, 667 (7th Cir. 2009). The record here sheds no light on whether a lower drug-quantity finding would have led to the same sentence.

Accordingly, the case must be remanded for resentencing to include factual findings resolving the parties' dispute over the quantity of heroin attributable to Barfield. The government concedes that the 20-year sentence on the money-laundering count exceeds the 10-year statutory maximum, 18 U.S.C. §§ 1956(h), 1957(a)–(b)(1), so that error too requires correction on remand. Because Barfield will be resentenced, there's no need to resolve his remaining argument about the adequacy of the judge's explanation for the 27-year sentence on the drug-conspiracy count.

For these reasons, we VACATE Barfield's sentence and REMAND for resentencing.

PROBATION OFFICER: No.
THE COURT: Grams?
PROBATION OFFICER: Exactly.