

**NONPRECEDENTIAL DISPOSITION**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 July 12, 2023

Decided July 18, 2023

**Before**

DIANE S. SYKES, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

No. 22-1838

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

TOMMY TRAN,  
*Defendant-Appellant.*

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

No. 3:19-cr-30012-005-SEM-KLM-5

Sue E. Myerscough,  
*Judge.*

**ORDER**

Tommy Tran was one of several California-based drug suppliers who served buyers in the Midwest. The buyers paid by wiring money to Tran and other suppliers in California. Tran often coordinated these payments and shipments with the buyers, and he maintained a record of who received which wired payments from whom. Tran pleaded guilty to multiple drug crimes, and the sentencing judge, over Tran's objection, increased his offense level under U.S.S.G. § 3B1.1 for his management role in the offense. We affirm.

## I

Tran and others based in California supplied drugs to buyers in the Midwest, including central Illinois. Typically, the buyers wired money to the suppliers, and the suppliers then shipped the desired drugs in the mail to their customers.

Tran helped to coordinate these shipments and payments, both with respect to his own sales and those of his associates. He spoke by phone with the buyers about wiring money to and receiving drugs from California. The buyers wired money to either Tran or his associates in California. The buyers also sent Tran information about the location of the wired money, and Tran recorded that information in a notebook, including the names of associates to whom the buyers had wired payments. Tran and his associates also sent packages to the buyers, until the police intercepted some of these shipments and saw that they contained drugs. The following examples illustrate Tran's role in these arrangements:

- The buyers wired three payments in early 2016, two to Tran and one to an associate. Tran and the associate retrieved the payments from the same location.
- Over two years later, in late 2018, Tran and an associate received wired payments from the buyers; they picked up the cash at the same location at nearly the same time.
- A few days later, the buyers wired money to an associate of Tran's and gave Tran the information needed to pick up the wired funds.
- Days afterward (now early 2019), two payments were wired to different associates of Tran's.
- About two weeks later, a buyer who wired payments to Tran and two associates called Tran to let him know the money had been wired.

Tran also bragged that he could recruit new suppliers. During a call in January 2019, Tran told a buyer that he had a connection in Minnesota who could become a new supplier. Tran said that he would "constantly find different lines and constantly find different ways" to supply drugs, and that the Minnesota connection would "be the move that will keep us in order."

Tran's luck ran out in 2019, when the police arrested him and he was indicted by a federal grand jury for (1) conspiring to possess with intent to distribute over

500 grams of methamphetamine, see 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846, and (2) using a communication facility to commit a drug felony, see *id.* § 843(b). Tran pleaded guilty, without an agreement, to both counts. The judge then ordered the preparation of a Presentence Investigation Report (PSR).

Over Tran's objection, the district judge accepted the recommendation in the PSR to apply a two-point leadership enhancement under U.S.S.G. § 3B1.1(c) to Tran's offense level. At the sentencing hearing, Tran "concede[d]" that he occasionally "did have individuals pick up payments," but he denied that he controlled anyone. He also stated that he "did not recruit accomplices to distribute drugs." The judge denied Tran's objection and applied the enhancement.

With that objection resolved, Tran had an offense level of 35 and a criminal-history category of III. This yielded an advisory sentencing range of 210 to 262 months' imprisonment on the conspiracy charge and 48 months for the communication-facility charge. Appealing to the district court's discretion under 18 U.S.C. § 3553(a), Tran asked for a prison term of 140 months. The judge ultimately settled on a sentence of 180 months' imprisonment, 30 months below the low end of the guidelines range.

## II

On appeal, Tran argues that the district judge erred by applying the section 3B1.1(c) enhancement. That guideline prescribes a two-level increase if a defendant was either an organizer, leader, manager, or supervisor of criminal activity that involved fewer than five participants. A person qualifies for this enhancement if he "[told] people what to do and determine[d] whether they[ did] it." *United States v. Figueroa*, 682 F.3d 694, 697 (7th Cir. 2012). The guideline sets out a number of factors that, although not dispositive, can help courts determine whether the enhancement applies. See U.S.S.G. § 3B1.1 cmt. n.4; *United States v. House*, 883 F.3d 720, 724 (7th Cir. 2018). Tran's appeal turns on whether either of two factors—a "degree of control ... over others" or "recruitment of accomplices"—is present. U.S.S.G. § 3B1.1 cmt. n.4. We review the judge's factual findings for clear error. *House*, 883 F.3d at 723.

We begin with the issue of Tran's "degree of control" over others. Tran largely accepts the facts in the PSR recounted above. He contends, though, that at most they show that he coordinated drug sales; he urges that they do not suggest that he had any control over associates who received money (sporadically spaced out over years) from the sales that he coordinated.

But it was not clearly erroneous for the judge to infer that Tran did control when and how associates were paid. The evidence shows that Tran spoke with the buyers about paying for drugs, received from them information about who was paid how much and when, recorded those details in a notebook, and then (as he concedes) told co-conspirators how and where to collect the money. From this, the judge reasonably inferred that Tran—uniquely among the California suppliers—had authority over people on the central issue of payment. See *Figueroa*, 682 F.3d at 697. True, one could also infer that Tran merely transmitted information to others, rather than controlled them, but it is not clearly erroneous for a judge to choose between two permissible views of the evidence. See *Sanders v. Melvin*, 25 F.4th 475, 483 (7th Cir. 2022). (We pause to emphasize that the conclusion that Tran controlled people with respect to their payments is an inference from facts; nothing in the PSR says this directly, despite the government’s assertions to the contrary.)

Tran responds that even if he did occasionally control others regarding money, it was not significant or frequent enough to justify the enhancement. He cites *United States v. Mankiewicz*, where we ruled that a section 3B1.1 enhancement, based on a defendant’s oversight of his father, was improper. 122 F.3d 399, 406 (7th Cir. 1997). There, the defendant had his father help him store drugs and attend a meeting between the lead buyer and supplier. *Id.* at 401, 406. The enhancement did not apply because (1) the defendant’s “leadership” of his father was limited to one instance, and (2) no evidence suggested how much discretion the defendant had over the stored drugs. *Id.* at 406, 406 n.4. But these considerations cut against Tran. First, Tran concedes that he coordinated payments with his associates at least five times, not just once. This extended, even if sporadic, coordination suggests a settled, ongoing operation. Second, the evidence here suggests that Tran exercised discretion over the drug payments because he talked to the buyers about it, discussed logistics, and tracked those payments in his notebook.

The evidence showing that Tran coordinated the money wires, although thin, is enough to conclude on clear-error review that he managed or supervised others. Because this is sufficient to justify the enhancement, see *House*, 883 F.3d at 725; *Figueroa*, 682 F.3d at 697, we need not decide whether he recruited other accomplices as described in application note 4 to U.S.S.G. § 3B1.1(c).

AFFIRMED