NONPRECEDENTIAL DISPOSITION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 February 15, 2024

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1731

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL CHAPMAN,
Defendant-Appellant.

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

No. 21-CR-245

William C. Griesbach,
Judge.

O R D E R

Michael Chapman pleaded guilty to conspiring to distribute and possessing with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. In calculating the range of imprisonment under the Sentencing Guidelines, the district court added two offense levels, finding that Chapman was an organizer, leader, manager, or supervisor of the conspiracy among him and his two co-defendants. *See* U.S.S.G. § 3B1.1(c). Chapman appealed, arguing that the court erred in applying the adjustment. Because Chapman

supervised at least one of his co-defendants, the adjustment was appropriate. We affirm.

The investigation into Chapman began in September 2021 after postal inspectors with the United States Postal Service intercepted a suspicious package sent from "Ali Edwards" in California to Kelsee Haas-Parker at her residence in Wisconsin. Investigators from the Brown County, Wisconsin Drug Task Force obtained a warrant and opened the package, which contained approximately ten pounds of methamphetamine. Investigators then effected a controlled delivery of the package to Haas-Parker and arrested her.

Haas-Parker informed the investigators that Chapman had sent her the September 2021 package; her cell phone also contained detailed messages between her and Chapman about what she should do with it. He directed Haas-Parker to meet him at a Dollar General store in Green Bay with the package. There, he would instruct her to give the package to him at a different location. Haas-Parker's arrest occurred before that exchange could take place.

Haas-Parker's phone also contained messages revealing that she and Chapman had moved drugs a few months earlier in June 2021. Haas-Parker told investigators that Chapman had flown to California and mailed her a package, which he was supposed to pick up upon his return to Wisconsin. However, after getting stuck in Chicago, Chapman directed Haas-Parker to deliver it to a residence in Green Bay. Although Chapman initially told Haas-Parker that the package contained food, she figured out that it contained drugs. She later met up with Chapman, who paid her $250. Haas-Parker told officers that she believed that Chapman would pay her the same amount for delivering the second package.

Investigators then researched the Green Bay residence to which Haas-Parker had delivered the package. It belonged to Holly Tease, and postal records revealed that another package, weighing 25 pounds, was mailed from California to Tease's address by "Ali Edwards" in July 2021. Investigators contacted Tease at her residence, and she admitted that Chapman had sent a package to her house and retrieved it from her porch after its delivery. Tease also later admitted that a woman (presumed to be Haas-Parker) delivered a package to her house, and Chapman's cousin retrieved it. Tease stated that Chapman did not pay her for her involvement. She also informed officers that she often purchased marijuana from Chapman and presumed that the two packages contained

marijuana. Tease also told officers that Chapman had told her before her arrest to lie to the police.

Chapman, Haas-Parker, and Tease were charged with conspiring to distribute and possessing with intent to distribute 500 grams or more of a mixture and substance containing methamphetamine. *See* 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846. Haas-Parker and Tease each pleaded guilty to a lesser offense and were sentenced to three years' probation. *See* 21 U.S.C. § 843(b).

Chapman pleaded guilty to the indictment pursuant to a plea agreement. The agreement provided that the government would seek a two-level sentencing adjustment for Chapman's role in the offense as an organizer, leader, manager, or supervisor. *See* U.S.S.G. § 3B1.1(c). As relevant to this case, the § 3B1.1 adjustment would render Chapman, who had no disqualifying prior convictions, nevertheless ineligible for "safety valve" consideration. Therefore, the district court would be prevented from sentencing him below the applicable mandatory minimum of ten years' imprisonment. *See* 18 U.S.C. § 3553(f)(4); 21 U.S.C. § 841(b)(1)(A).

Neither party objected to the Presentence Investigation Report's factual statements. At the sentencing hearing, the court adopted them, but Chapman argued that the § 3B1.1 adjustment did not apply to those limited facts. Chapman argued that his interactions with his co-defendants were limited to using their addresses for mailings, plus asking Haas-Parker to drop off a package for him. He also obtained a report from a sentencing consultant, who opined that the adjustment was inapplicable because Chapman was not a large-scale trafficker, his co-defendants were friends who made extra money by allowing Chapman to use their addresses, and the conspiracy was relatively short-term. The government argued that Chapman's decision-making authority, recruitment of accomplices, and larger share of the profits relative to his co-defendants were factors supporting the adjustment. The court noted the women's modest role in the scheme, stating that "there really wasn't a whole lot of participation except to use an address" to deliver the packages.

Applying the adjustment, the court also recognized that Chapman "involved two women … and had them receive the packages and then place the packages or make them available for him." Because Haas-Parker and Tease "played the role that [Chapman] directed them to play," the court reasoned that Chapman was an organizer, leader, manager, or supervisor. Sentencing Chapman to the mandatory minimum of ten years' imprisonment, the court remarked that it lacked the authority to impose a lesser sentence. This appeal followed.

On appeal, Chapman argues that the district court erred in applying the § 3B1.1(c) adjustment. When considering such a challenge, "we review the district court's factual determinations for clear error, and we review whether those facts support the enhancement de novo." *United States v. House*, 883 F.3d 720, 723 (7th Cir. 2018). Here, the district court made no factual findings beyond accepting the statements in the PSR, to which neither side objected, and on appeal, they continue to rely on the same shared understanding of the factual basis for the adjustment. The dispute is about whether those agreed facts support the application of the adjustment, and so our review is de novo. *Id.*

The relevant guideline prescribes a two-level increase to a defendant's offense level if he was an organizer, leader, manager, or supervisor of criminal activity that involved fewer than five participants. *See* U.S.S.G. § 3B1.1(c). Although, in larger criminal enterprises, organizers and leaders are considered more culpable, and therefore subject to a greater adjustment, than "mere" managers or supervisors, in smaller groups "the distinction between organization and leadership, and that of management or supervision, is of less significance" because "clearly delineated divisions of responsibility" are less likely. U.S.S.G. § 3B1.1 cmt. n.4.

Because Chapman need only have been a manager or supervisor, we consider whether he meets that lower threshold. The guideline sets out several factors, including the exercise of decision-making authority, that, although not dispositive, are relevant to the defendant's role in the offense. *See id.*; *House*, 883 F.3d at 724. We have taken a practical approach to this inquiry, *House*, 883 F.3d at 724, though we require that the defendant have engaged in "affirmative acts" of supervising or managing "that indicate his greater relative culpability in the offense than others involved," *United States v. Colon*, 919 F.3d 510, 518 (7th Cir. 2019). A defendant generally qualifies for an upward adjustment 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).

Despite Chapman's argument that he did not exert sufficient control or authority over Haas-Parker and Tease to be considered a manager or supervisor of their activity, the facts he admitted are sufficient for him to qualify as to one or both co-defendants. His role as to Tease is the closer call, but he meets the requirements for the adjustment. As the government notes, Tease's involvement was more limited and passive than Haas-Parker's, and therefore required little active supervision. But Tease accepted two packages at Chapman's direction—one delivered by mail that Chapman retrieved from

her porch and a second one delivered by Haas-Parker that Chapman's cousin picked up. Tease did not deliver any packages for Chapman, but he did recruit her into the conspiracy: She would not have been involved but for Chapman's affirmative requests for her assistance. And Tease admitted that she was willing to accept packages from Chapman that she knew contained drugs. Chapman's plea agreement also contains the admission that Tease's phone contained "messages involving drug transactions over several months."

The government also points out that Chapman "directed"—in the words of the PSR—Tease to lie for him if contacted by the police. We do not rest our decision on the particular verb used in the PSR, and we note that, in itself, enlisting help to cover up a crime does not necessarily support the adjustment. *See United States v. McGee*, 985 F.3d 559, 564 n.4 (7th Cir. 2021). But telling a co-defendant what to do with respect to joint criminal activity—as Chapman did with Tease—does. *See United States v. Oliver*, 873 F.3d 601, 612 (7th Cir. 2017).

The guideline even more clearly applies to Chapman with respect to his relationship to Haas-Parker. Chapman was her manager or supervisor the two times she picked up packages of methamphetamine for him, and his supervision of Haas-Parker is sufficient to justify the adjustment on its own. *See United States v. Lovies*, 16 F.4th 493, 506 (7th Cir. 2021). The first time that Chapman shipped a package containing drugs to Haas-Parker's address, he told her to deliver the package upon its arrival to a specific address, and she did. *See Figueroa*, 682 F.3d at 697. The second time, Chapman directed her to obtain the package from the post office and meet him at a specified Dollar General store, where he was going to instruct her on where to meet again to exchange the package.

Chapman primarily relies on our decision in *Colon* to argue that he did not exert sufficient control over his co-defendants to apply the adjustment, but the facts of that case are distinguishable. In that case, Colon, a middleman in a drug-trafficking operation, purchased drugs wholesale from an out-of-state supplier. *Colon*, 919 F.3d at 513. The supplier dispatched couriers to deliver shipments of drugs to Colon, who resold the drugs to local dealers. *Id.* We determined that instances in which Colon directed the couriers on the details of deliveries or requested the couriers to drive him to deliver drugs to a local dealer did not make him an organizer, leader, manager, or supervisor. *Id.* at 517, 519. These instances were "more consistent with a supplier accommodating the needs of his customer than an organizer controlling a drug operation." *Id.* at 519.

Chapman's role with respect to Haas-Parker and Tease, however, is not comparable to one between a middleman and courier. He personally involved them in the drug trafficking scheme and was their only connection to that activity. By contrast, Colon's supplier employed the couriers who brought drugs to Colon to distribute, and even when Colon organized the logistics of an exchange, they were working for the supplier, not Colon. And in that case, we noted the need for care in applying a leadership enhancement to middlemen in "cases involving large-scale drug dealers," *id*. at 519, which is not the scenario before us now. But even without these factual distinctions, this case falls within the legal baseline we articulated: "[T]he district court must identify instances where the defendant orchestrated or oversaw the drug operation and those involved in it." *Id*.

The district court did so here. Chapman's step-by-step directing of a drug delivery correlates with the facts of *United States v. Anderson*, 988 F.3d 420, 423 (7th Cir. 2021), in which Anderson, a drug supplier, arranged for her uncle to supply a local drug dealer on her behalf while she vacationed elsewhere. Anderson arranged the logistics of the deal and maintained phone contact with the dealer throughout the pickup, providing him with step-by-step instructions. *Id.* at 428. We determined that the § 3B1.1(c) adjustment was appropriate, even for that single transaction, because "Anderson … coordinated the entire delivery," and her uncle and the dealer "exercised very little discretion over the manner in which the offense unfolded." *Id.* Similarly here, Chapman acted as a manager or supervisor when he coordinated both deliveries, gave Haas-Parker step-by-step instructions about where to deliver the packages, and left her with little discretion. *Id.*; *see Figueroa*, 682 F.3d at 697. He also checked up on whether she had done it. *See Figueroa*, 682 F.3d at 697.

Chapman next argues that the record equally supports the conclusion that he merely made isolated requests to two longtime friends to have packages mailed to their addresses. But this argument is unpersuasive because the adjustment can apply even if the criminal acts were one-time transactions. *See Lovies*, 16 F.4th at 507. Furthermore, Haas-Parker and Tease were not independently engaged in criminal activities "divisible from the series of crimes at issue." *Id.* To the contrary, regardless of what they knew, Chapman recruited them to assist him in his scheme to ship drugs from California to Wisconsin for sale. And having a personal friendship with Haas-Parker and Tease does not foreclose Chapman from being their manager or supervisor. *See United States v. Howell*, 527 F.3d 646, 651 (7th Cir. 2008).

Finally, Chapman argues that the district court should not have applied the § 3B1.1 adjustment because Haas-Parker and Tease, participants in criminal activity with Chapman, were convicted of less serious offenses. Chapman concludes that his co-defendants' lesser sentences account for his relative responsibility in the offense, making an adjustment for him unnecessary. Chapman asserts that the commentary for § 3B1.2, the guideline that provides for mitigating role adjustments, supports his argument. An application note there explains that a reduction for a mitigating role ordinarily is not warranted for a defendant who is convicted of an offense less serious than his actual conduct: That defendant "is not substantially less culpable than a defendant whose only conduct involved the less serious offense." U.S.S.G. § 3B1.2 cmt. n.3.

According to Chapman, this principle should apply to the § 3B1.1 adjustment. But the commentary to § 3B1.1 defines a participant in criminal activity as "a person who is criminally responsible for the commission of the offense, but need not have been convicted." U.S.S.G. § 3B1.1 cmt. n. 1; *see also United States v. Fluker*, 698 F.3d 988, 1002 (7th Cir. 2012) (explaining that a "participant" is someone who could have been charged as an accessory). No authority suggests that Haas-Parker's and Tease's convictions for lesser offenses affect whether Chapman can be considered their manager or supervisor. And to the extent that Chapman is arguing that the adjustment created an unwarranted sentencing disparity with his co-defendants, the court's imposition of a within-Guidelines sentence accounts for those concerns because the Guidelines promote uniformity. *See United States v. Sanchez*, 989 F.3d 523, 540–41 (7th Cir. 2021). Nor would any disparity be "unwarranted" because the co-defendants were not similarly situated: They were convicted of less serious offenses and were much less involved in trafficking methamphetamine than Chapman. *See United States v. Bartlett*, 567 F.3d 901, 909 (7th Cir. 2009) (affirming court's rationale that disparity was "justified by material differences in the offenders' conduct and acceptance of responsibility"); *United States v. Statham*, 581 F.3d 548, 556 (7th Cir. 2009).

AFFIRMED