

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

JOHN DOE
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

APPENDIX

PETITION FOR WRIT OF CERTIORARI

GERARD E. GREALISH, Esquire
Suite 3H
116 North Washington Avenue
Scranton, PA 18503
(570) 346-0277
Attorney ID #61013
Court Appointed
Counsel for Petitioner
John Doe

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3200

UNITED STATES OF AMERICA

v.

JOHN DOE,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-13-cr-00106-010)
District Judge: Robert D. Mariani

Submitted Under Third Circuit L.A.R. 34.1(a)
May 22, 2018

Before: MCKEE, SHWARTZ, and COWEN, Circuit Judges.

JUDGMENT

This cause came to be considered on the record United States District Court for the
Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR
34.1(a) on May 22, 2018.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this
Court that the Judgment of the District Court entered on September 19, 2017 is hereby
AFFIRMED. All of the above in accordance with the Opinion of this Court.

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ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 25, 2018

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3200

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JOHN DOE,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-13-cr-00106-010)
District Judge: Hon. Robert D. Mariani

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May 22, 2018

Before: MCKEE, SHWARTZ and COWEN, Circuit Judges.

(Opinion Filed: May 25, 2018)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7
does not constitute binding precedent.

SHWARTZ, Circuit Judge.

Defendant John Doe pleaded guilty to conspiring to distribute controlled substances and was sentenced to 156 months' imprisonment. On appeal, Doe challenges the District Court's application of a two-level enhancement pursuant to § 3C1.2 of the United States Sentencing Guidelines for reckless endangerment during flight. For the reasons that follow, we will affirm.

I

On August 23, 2013, police officers in Fort Lee, New Jersey, were on routine patrol and observed a vehicle in a motel parking lot whose license plate did not match the vehicle's registration number. The officers went to the room associated with the vehicle and encountered Doe, who gave the officers permission to search the vehicle. During the search, officers found documents that reflected drug trafficking and/or money laundering. Doe fled on foot, entered an unmarked police car, drove the car at the officers, struck them, dragged one of them, and sped away from the scene toward New York City.

A few weeks later, law enforcement found Doe at an apartment complex in Monroe County, Pennsylvania. A search of the apartment revealed heroin, cocaine, amphetamines, and more than \$17,000 in cash. Doe confessed to obtaining heroin and other illegal drugs from conspirators in Chicago and Mexico and distributing those drugs to conspirators in Pennsylvania between 2011 and 2013.

A federal grand jury indicted Doe and others for, among other things, conspiracy to distribute and possess with intent to distribute controlled substances in Pennsylvania

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and elsewhere between December 2010 and March 2014. Doe pleaded guilty to the conspiracy count.

Following his guilty plea, a pre-sentence investigation report was prepared which recommended a two-level enhancement in his offense level for reckless endangerment during flight pursuant to § 3C1.2 based on the events of August 23, 2013. Doe objected to the enhancement. The District Court overruled the objection, and sentenced Doe to 156 months' imprisonment. Doe appeals the application of the § 3C1.2 enhancement.

II¹

Section 3C1.2 provides for a two-level enhancement “[i]f the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer[.]” U.S.S.G. § 3C1.2. Doe does not dispute that his conduct—fleeing on foot after police officers found documents reflecting drug trafficking and/or money laundering, entering an unmarked police vehicle, driving the vehicle at the officers, striking them, and dragging one of them as he sped away from the scene—was reckless and created a substantial risk of death or serious bodily injury to another person. Rather, he contends the District Court erred by not requiring a nexus between his reckless conduct and his offense of conviction, and by concluding that, in

¹ The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742(a). We “exercise plenary review over [the] [D]istrict [C]ourt’s interpretation of the Guidelines,” United States v. Grier, 475 F.3d 556, 570 (3d Cir. 2007) (en banc), and we “review the District Court’s application of the Guidelines to facts for abuse of discretion and its factual findings for clear error,” United States v. Huynh, 884 F.3d 160, 165 (3d Cir. 2018) (alterations, citation, and internal quotation marks omitted).

any event, there was a sufficient nexus to apply the enhancement to Doe's offense level. Specifically, Doe asserts that there was no nexus between his reckless conduct and offense of conviction because his reckless conduct was prompted by a routine police patrol unrelated to the federal drug charges filed against him. He also asserts that the recovery of evidence relating to the drug conspiracy less than one month later cannot retroactively connect his prior reckless conduct to the offense of conviction. We disagree.

While at least two circuit courts have required a nexus between the reckless conduct and offense of conviction, United States v. Dial, 524 F.3d 783, 787 (6th Cir. 2008); United States v. Southerland, 405 F.3d 263, 268-69 (5th Cir. 2005), we need not decide whether § 3C1.2 requires such a nexus because one exists in this case, see United States v. Duran, 37 F.3d 557, 558-60 (9th Cir. 1994) (assuming without deciding that § 3C1.2 requires a nexus between the reckless endangerment and the crime of conviction). The offense of conviction—conspiracy to distribute and possess with intent to distribute controlled substances—is directly connected to Doe's reckless endangerment. He was under investigation for drug trafficking and was an active participant in the drug conspiracy at the time the police searched his vehicle and found documents reflecting drug trafficking and/or money laundering activity. Less than a month later, Doe was found in possession of large quantities of drugs and cash and admitted to participating in an ongoing multistate and multinational drug conspiracy. It is therefore reasonable to infer that Doe's reckless flight on August 23, 2013 was prompted by his concern that he would be apprehended with evidence of the drug conspiracy.

Because there is both temporal and geographic proximity between his reckless conduct and the offense of conviction and a basis to infer his reckless conduct was associated with his efforts to avoid apprehension for that offense, the District Court did not clearly err in applying the two-level enhancement to Doe's offense level pursuant to § 3C1.2. See Dial, 524 F.3d at 788 (finding sufficient nexus for purposes of § 3C1.2 enhancement where defendant's "mindset at the time of his flight" and "the temporal and geographic proximity between the flight and the conspiracy to distribute methamphetamine" demonstrated defendant was "attempting to prevent detection of the ongoing conspiracy").

III

For the foregoing reasons, we will affirm.

OFFICE OF THE CLERK

PATRICIA S.
DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

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215-597-2995



May 25, 2018

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Francis P. Sempa
Office of United States Attorney
235 North Washington Avenue
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Scranton, PA 18503

RE: USA v. John Doe
Case Number: 17-3200
District Court Case Number: 3-13-cr-00106-010

ENTRY OF JUDGMENT

Today, **May 25, 2018** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

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Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

s/ Patricia S. Dodszuweit
Clerk

By: James King
Case Manager
267-299-4958

UNITED STATES DISTRICT COURT

Middle District of Pennsylvania

UNITED STATES OF AMERICA

v.

JUAN MENDEZ-LAZARO

) JUDGMENT IN A CRIMINAL CASE
)
) Case Number: 3:13-CR-106-10
) USM Number: 58329-066
) Gerard Edmund Greaham, Esq.
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One of the Superseding Indictment

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Code & Section	Nature of Offense	Offense Ended	Count
U.S.C. § 846	Conspiracy to Distribute and Possess With Intent to Distribute Fentanyl, Oxycontin, in Excess of 280 Grams of Cocaine Base (Crack), (CONTINUED ON PAGE 2)	3/25/2013	One

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/15/2017

Date of Imposition of Judgment

Signature of Judge

Robert D. Mariani, United States District Judge

Name and Title of Judge

Date

9/19/17

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DEFENDANT: JUAN MENDEZ-LAZARO
CASE NUMBER: 3:13-CR-106-10

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
	In Excess of 5 Kilograms of Cocaine, in Excess of 50 Grams of Methamphetamine, and in Excess of 1 Kilogram of Heroin		

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DEFENDANT: JUAN MENDEZ-LAZARO
CASE NUMBER: 3:13-CR-106-10

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

One Hundred Fifty-six (156) months, to run concurrent with the sentence imposed in the Court of Common Pleas of Montgomery County, Dkt. No. CR-7631-13. Pursuant to USSG Sec. 5G1.3(b), the period of time to be credited to Defendant under this sentence shall be calculated to begin 09/26/2013.

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the BOP designate FCI-Fort Dix as the place for service of the sentence imposed.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: JUAN MENDEZ-LAZARO

CASE NUMBER: 3:13-CR-106-10

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

five (5) years.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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DEFENDANT: JUAN MENDEZ-LAZARO
CASE NUMBER: 3:13-CR-106-10

STANDARD CONDITIONS OF SUPERVISION

part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.

After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

You must answer truthfully the questions asked by your probation officer.

You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

You must follow the instructions of the probation officer related to the conditions of supervision.

You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

S. Probation Office Use Only

U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date _____

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DEFENDANT: JUAN MENDEZ-LAZARO

CASE NUMBER: 3:13-CR-106-10

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) You must participate in a substance abuse treatment program and follow the rules and regulations of that program (provider, location, modality, duration, intensity, etc.) which could include an evaluation and completion of any recommended treatment;
- 2) You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods; and
- 3) You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.) which could include an evaluation and completion of any recommended treatment. You must take all mental health medications that are prescribed by your treating physician.

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DEFENDANT: JUAN MENDEZ-LAZARO
CASE NUMBER: 3:13-CR-106-10

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

Assessment JVTA Assessment* Fine Restitution
TALS \$ 100.00 \$ \$ \$

The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution

the interest requirement for the fine restitution is modified as follows:

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FENDANT: JUAN MENDEZ-LAZARO

SE NUMBER: 3:13-CR-106-10

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

Payment to begin immediately (may be combined with C, D, or F below); or

Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

Special instructions regarding the payment of criminal monetary penalties:

IT IS ORDERED that the defendant shall pay to the Clerk, U.S. District Court, a special assessment of \$100, due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine rest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

AIT