

No. __ - _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSE SANTILLAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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Northern District of Texas

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 25, 2019

Lyle W. Cayce
Clerk

No. 18-10440
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE SANTILLAN,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:17-CR-29-1

Before BENAVIDES, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:*

Jose Santillan appeals from his jury verdict conviction for conspiracy to distribute and possess with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and (b)(1)(A)(viii). The district court sentenced Santillan to a within-guidelines term of 212 months of imprisonment, followed by five years of supervised release.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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On appeal, Santillan argues that the evidence produced at trial was insufficient to support the jury's verdict because a cooperating co-conspirator's testimony that Santillan was his source for methamphetamine was incredible and uncorroborated. Because his challenge is preserved, it is subject to de novo review. *See United States v. Frye*, 489 F.3d 201, 207 (5th Cir. 2007); *United States v. Resio-Trejo*, 45 F.3d 907, 910 n.6 (5th Cir. 1995). We view "all evidence, whether circumstantial or direct, in the light most favorable to the Government with all reasonable inferences to be made in support of the jury's verdict." *United States v. Moser*, 123 F.3d 813, 819 (5th Cir. 1997).

Unless it is factually insubstantial or incredible, a co-conspirator's uncorroborated testimony may be constitutionally sufficient evidence to convict, even if the co-conspirator is cooperating with the government in exchange for leniency. *United States v. Turner*, 319 F.3d 716, 721 (5th Cir. 2003). Testimony is not "incredible as a matter of law unless it is so unbelievable on its face that it defies physical laws." *United States v. Gardea Carrasco*, 830 F.2d 41, 44 (5th Cir. 1987) (internal quotation marks and citation omitted). Our examination of the record does not support Santillan's characterization of the co-conspirator's testimony as factually insubstantial or incredible. Moreover, the record also contains circumstantial evidence showing that Santillan was the methamphetamine supplier for an undercover officer's controlled purchase from the co-conspirator.

Next, Santillan contends that the district court erred by attributing to him as relevant conduct a quantity of methamphetamine seized in New Mexico. He asserts that this constituted error because (1) there was no evidence linking him to that shipment, and (2) the New Mexico shipment did not meet any of the criteria set forth in U.S.S.G. § 1B1.3(a)(1) or (2). We generally review a district court's finding regarding the applicable drug

No. 18-10440

quantity for clear error and will affirm the finding as long as it is plausible in light of the record as a whole. *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005). “[T]he district court need only determine its factual findings at sentencing by a preponderance of the relevant and sufficiently reliable evidence.” *United States v. Hinojosa*, 749 F.3d 407, 415 (5th Cir. 2014) (internal quotation marks and citation omitted). Because there was reliable evidence linking Santillan to the New Mexico shipment, the record supports the district court’s finding in this regard. *See id.*

Plain error review applies to the second aspect of Santillan’s challenge to the New Mexico shipment’s inclusion as relevant conduct because Santillan did not object on this specific basis in district court. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Neal*, 578 F.3d 270, 272 (5th Cir. 2009). Under that standard of review, Santillan must show an error that is clear or obvious—rather than subject to reasonable dispute—and affects his substantial rights. *See Puckett*, 556 U.S. at 135. If he makes that showing, we have the discretion to correct the error only if it “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (internal quotation marks, brackets and citation omitted). Because a determination of relevant conduct is a finding of fact capable of resolution by the district court, Santillan’s unpreserved challenge cannot meet the plain-error standard of review. *See United States v. McCaskey*, 9 F.3d 368, 376 (5th Cir. 1993). In any event, our examination of the indictment, as well as the evidence produced at trial and at sentencing, does not reveal any clear or obvious error as to the inclusion of the New Mexico shipment as relevant conduct under § 1B1.3(a).

The judgment of the district court is AFFIRMED.

APPENDIX B

United States District Court

NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
2018 MAR 28 PM
CLERK VLS

v.

JOSE SANTILLAN

Case Number: 2:17-CR-00029-D-BR(1)
USM Number: 55638-177David H Martinez
Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	1 of the indictment filed on March 30, 2017

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 846 & 841(a)((1) & (b)(1)(A)(viii) - Conspiracy to Distribute and Possess With Intent to Distribute 50 Grams or More of Methamphetamine	03/30/2017	1

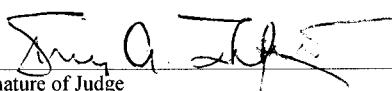
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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, or 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.

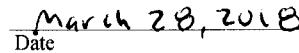
March 26, 2018

Date of Imposition of Judgment


 Signature of Judge

SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

Name and Title of Judge


 Date

DEFENDANT: JOSE SANTILLAN
CASE NUMBER: 2:17-CR-00029-D-BR(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
two hundred twelve (212) months as to count 1.

The court makes the following recommendations to the Bureau of Prisons: that the defendant be assigned to FCI – Big Spring, Texas, if eligible.

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 03/28/2018 to

at USM Office, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE SANTILLAN
CASE NUMBER: 2:17-CR-00029-D-BR(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. 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)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. 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 additional conditions on the attached page.

DEFENDANT: JOSE SANTILLAN
CASE NUMBER: 2:17-CR-00029-D-DB(1)

STANDARD CONDITIONS OF SUPERVISION

As 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.

1. 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.
2. 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.
3. 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.
4. You must answer truthfully the questions asked by your probation officer.
5. 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.
6. 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.
7. 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.
8. 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.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. 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).
11. 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.
12. 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.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A 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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JOSE SANTILLAN
CASE NUMBER: 2:17-CR-00029-D-BR(1)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

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:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSE SANTILLAN
CASE NUMBER: 2:17-CR-00029-D-BR(1)

SCHEDE OF PAYMENTS

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

- A Lump sum payments of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C 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
- D Payment in equal 20 (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
- E 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
- F Special instructions regarding the payment of criminal monetary penalties:

See special condition of supervision regarding restitution, as if set forth in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - 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 interest, (6) community restitution, (7) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.