UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1348

UNITED STATES OF AMERICA

v.

DAVID THOMAS,
aka David Thompson,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D. C. Civil No. 2-15-cr-00370-001)
District Court Judge: Honorable Gerald A. McHugh

Submitted Pursuant to Third Circuit L.A.R. 34.1(a) on
December 11, 2018

Before: SMITH, *Chief Judge*, McKEE and FISHER, *Circuit Judges*

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on December 11, 2018.

On consideration whereof, it is hereby ORDERED and ADJUDGED by this Court that the order of the District Court Judge, entered on February 3, 2017, is hereby AFFIRMED.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: August 8, 2019

Certified as a true copy and issued in lieu of a formal mandate on August 30, 2019

Teste: Patricia A Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

NOT PRECEDENTIAL

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FOR THE THIRD CIRCUIT

_____

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December 11, 2018

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Before: SMITH, *Chief Judge*, McKEE and FISHER, *Circuit Judges*

(Opinion filed: August 8, 2019)

_____

OPINION*

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

McKEE, *Circuit Judge*.

David Thomas appeals the judgment of sentence that was imposed following his guilty plea to armed bank robbery and related offenses. For the reasons that follow, we will affirm the sentence that was imposed.[1]

Thomas argues that the district court erred in applying a sentencing enhancement for obstruction of justice because he counseled his then-girlfriend, co-defendant Lane, to lie about her involvement in the robberies.[2] Thomas acknowledges that Lane testified that he told her to lie, but argues that because the lie did not relate to his own sentencing, he is not eligible for the enhancement.[3] This argument relies on a misreading of U.S.S.G. § 3C1.1, which provides for the enhancement where "the defendant willfully obstruct[s] . . . the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction" or a "closely related offense."[4] The commentary to

[1] The district court had jurisdiction pursuant to 18 U.S.C. § 3231. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.
[2] Appellant's Br. 18 (acknowledging that "Lane testified that Mr. Thomas had encouraged her, in the context of her criminal case, to 'just take the minor role' and admit that 'you had knowledge of nothing'").
[3] *Id.* at 18–19.
[4] Sentencing Guideline § 3C1.1 states in full:

> If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by 2 levels.

Guideline § 3C1.1 notes that a co-defendant's case is a "closely related" case.[5] The commentary also includes "unlawfully influencing a co-defendant [to obstruct justice]"[6] and "committing, suborning or attempting to suborn perjury"[7] as examples of conduct that are covered by the Guideline. Thomas' argument is further foreclosed by our decision in *United States v. Powell*.[8]

Thomas's second argument is that the court erred in applying a leadership enhancement for the June 2 and June 30 robberies because the record does not support a finding that he was the leader. The district court's conclusion, however, is supported by the record. Alvin Johnson testified that Thomas was the leader and organizer of both the June 2 and June 30 robberies. Although the court did not elaborate as to the reasons for the enhancement, given this record, it did not need to. The court's thorough questioning during the sentencing hearing satisfies us that the court carefully considered whether the enhancement was appropriate and correctly concluded that it was justified given the testimony.

Finally, Thomas concedes that his third argument that the court erred in applying the mandatory minimum under 18 U.S.C. § 924(c)(3) for the use of a firearm during a crime of violence fails because it is foreclosed by our decision in *United States v. Robinson.*[9]

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[5] U.S.S.G. § 3C1.1, cmt. n.1.
[6] *Id.* cmt. n.4(A).
[7] *Id.* cmt. n.4(B).
[8] 113 F.3d 464, 468–69 (3d Cir. 1997).
[9] 844 F.3d 137, 139 (3d Cir. 2016). *See also U.S. v. Johnson*, 899 F.3d 191, 203–04 (3d Cir. 2018).

Accordingly, for the reasons stated above, we will affirm the judgment of the district court.

PATRICIA S. DODSZUWEIT

CLERK

OFFICE OF THE CLERK

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

TELEPHONE
215-597-2995

August 30, 2019

Ms. Kate Barkman
United States District Court for the Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Room 2609
Philadelphia, PA 19106

RE: USA v. David Thomas
Case Number: 17-1348
District Court Case Number: 2-15-cr-00370-001

Dear District Court Clerk,
Enclosed herewith is the certified judgment together with copy of the opinionr in the above-captioned case. The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

For the Court,

s/ Patricia S. Dodszuweit,
Clerk

s/ pdb Case Manager

cc:

Eric A. Boden
Emily McKillip
Alexandre N. Turner
Robert A. Zauzmer