

APPENDIX A

NONPRECEDENTIAL DISPOSITION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 August 6, 2024
Decided August 13, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3129

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JONATHON MASON,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:18-CR-00157(1)

Andrea R. Wood,
Judge.

ORDER

Jonathan Mason pleaded guilty to conspiracy and three distribution counts that were based on heroin sales to a cooperating source. 21 U.S.C. §§ 841(a)(1), 846. At sentencing, the court applied several offense characteristics to his base offense level, including a four-level increase for being an organizer or leader of a criminal activity. U.S.S.G. § 3B1.1. On appeal, Mason argues that the district court based the four-level increase on unreliable evidence—namely, testimony in a co-defendant’s trial from a cohort who disliked Mason and stated that he wished to see Mason imprisoned. The

district court, however, appropriately found the cohort's testimony to be reliable, and so we affirm.

From late 2017 to early 2018, the FBI investigated a drug-trafficking organization in the West Woodlawn neighborhood on Chicago's south side. According to the factual basis in Mason's guilty plea (and corroborated by intercepted conversations, video surveillance images, and evidence seized), the organization obtained wholesale quantities of heroin, cocaine, and marijuana; then mixed the drugs with additives, including fentanyl; and then repackaged and sold the reconstituted drugs to wholesale and retail customers.

Mason's role in the organization was significant. At the distribution level, he participated in three sales of large quantities of heroin to cooperating sources (roughly 100 grams each time), sometimes directly negotiating the terms of sale. He also delegated smaller sales to lower-level members of the organization and collected a portion of the profit. And a search of what was later determined to be his residence yielded large quantities of drugs, a drug press, mixing agent, a scale, and baggies—evidence that his home was the center of operations for processing the drugs. Mason was apprehended in 2018, soon after the search of his home.

While Mason's pretrial proceedings moved forward, one of his co-defendants, Deon Pugh, went to trial. Evidence elicited at Pugh's trial incriminated Mason. Of relevance for Mason's appeal, testimony presented at Pugh's trial by a lower-level witness, Derrick Wiltz, described drug transactions involving Mason and Pugh, the drug processing operations in Mason's residence, and Pugh's visits to Mason's residence. Wiltz was cross-examined and he apparently admitted that he held a deep grudge against Mason, who years earlier had set Wiltz up to take the blame for a crime Wiltz did not commit. The court (Judge Lee, then serving as the district judge) nevertheless credited Wiltz's account, particularly because his testimony was corroborated by video footage, intercepted telephone calls, evidence seized during a search of Mason's house, and photos taken of the house before the search showing the drug processing operations that occurred there.

Mason later pleaded guilty (under a plea declaration and without an agreement with the government) to one count of conspiracy to possess with intent to distribute and distribute controlled substances, 21 U.S.C. §§ 841(a)(1), 846, and four counts of distribution of controlled substances, 21 U.S.C. § 841(a)(1).

A probation officer prepared a presentence investigation report that calculated a total offense level of 38 and criminal history category of I, yielding a guidelines range of 235-293 months. Most relevant here is that the probation officer recommended a four-level increase in the offense level based on Mason's role as a manager or supervisor in a criminal activity involving five or more participants or that was otherwise extensive. U.S.S.G. § 3B1.1(a).

In his sentencing memorandum, Mason objected to the guidelines calculations, especially the four-level adjustment under U.S.S.G. § 3B1.1 for being a manager or supervisor. He denied being any sort of leader or organizer, and he denied (1) that he negotiated with suppliers to obtain wholesale quantities of cocaine, heroin, and fentanyl; (2) that he distributed or supervised the distribution of drugs to workers in the organization; (3) that he collected or supervised the collection of proceeds from workers; and (4) that workers returned a portion of the proceeds to him and others.

In its sentencing memorandum, the government—drawing upon Wiltz's testimony from Pugh's trial—emphasized Mason's role in overseeing the organization: the wholesale quantities of drugs that were brought to his residence, where he would mix the drugs with additives; his instructions to Wiltz to take the drugs to customers or distributors; his planned distribution efforts for the organization; and the customer complaints he handled. The government also highlighted photos taken of Mason's home, and evidence seized from the home which showed he was the one to process wholesale quantities of narcotics into resale quantities and that he distributed the drugs to lower-level members of the operation.

To address Mason's objections to the PSR, District Judge Wood, who had been reassigned to the case after Judge Lee's confirmation to our court, held an evidentiary hearing. Mason presented no new evidence but argued that the government had not substantiated his role as a leader because its evidence relied upon testimony at the Pugh trial from Wiltz, who was not credible. According to Mason, Wiltz's testimony made clear that he had a vendetta against Mason and had let it influence his testimony. At the close of the hearing, Judge Wood said that she would review the arguments and then reconvene later to evaluate the sentencing factors.

A week later, Judge Wood resumed Mason's sentencing, and she announced that the application of the § 3B1.1(a) adjustment was appropriate. Judge Wood explained that the government was entitled to rely upon testimony from another trial, particularly since that was sworn testimony given under oath. She acknowledged that she did not preside over the Pugh trial, and necessarily was limited to reviewing only what appears

on the page in the transcript, but she deemed it appropriate to "take into account Judge Lee's assessment of Mr. Wiltz's overall credibility." She added that she wanted to "make clear" that while she considered Judge Lee's finding that Wiltz generally was credible, she looked at the transcript "in light of the overall presentation of the evidence" and independently found Wiltz's testimony credible. Finally, she said that she based her decision on the "weight of the evidence in its totality." She assessed an offense level of 35 and sentenced Mason to 168 months' imprisonment—the bottom of his guidelines range.

On appeal, Mason challenges the application of the § 3B1.1(a) adjustment to his offense level for being the leader or organizer of the drug association. He argues that the court justified its ruling based on unreliable evidence, namely Wiltz's testimony in Pugh's trial. Mason argues that Judge Wood wrongly credited Wiltz's admittedly biased testimony—a flawed determination, particularly because it drew upon the credibility finding made by Judge Lee, who had evaluated Wiltz's credibility only with regard to Pugh, rather than Mason.

This court reviews credibility determinations made at sentencing for clear error. *United States v. Barker*, 80 F.4th 827, 833 (7th Cir. 2023). District courts have broad latitude to make such determinations: They are not required to reject testimony solely because it comes from a biased witness, even when the testimony is not corroborated. *United States v. Jones*, 56 F.4th 455, 508–509 (7th Cir. 2022). When a district court has considered the totality of the circumstances and found a witness credible, we generally will not disturb that decision, as the district court is best positioned to evaluate the record and the testimony. See *United States v. Austin*, 806 F.3d 425, 431–433 (7th Cir. 2015); see also *United States v. Lockwood*, 840 F.3d 896, 901 (7th Cir. 2016) (a district court's decision about witness credibility "can virtually never be clear error"). A district court also need not hear the testimony itself to make such a determination: If the witness has testified in another proceeding, a sentencing court may make a credibility determination from the transcript of the testimony. *United States v. Mendoza*, 576 F.3d 711, 718 (7th Cir. 2009).

Mason has failed to identify any fatal defects in Judge Wood's credibility determination. He mischaracterizes the record when he argues that she accepted Wiltz's credibility based only on Judge Lee's credibility finding at the Pugh trial. She stated at sentencing that Judge Lee's finding was "certainly not the only basis for me finding [Wiltz's] testimony similarly credible." She elaborated that she independently reviewed Wiltz's testimony in light of the rest of the record and found that the "testimony overall

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was credible." She was well within her discretion to reach this conclusion, especially because, as Judge Lee had noted, Wiltz's testimony was corroborated by other evidence. Indeed, Judge Wood's thorough review of the record and explanation for why she decided to credit Wiltz's testimony was commendable and more than enough to support a credibility determination.

Even without considering Wiltz's testimony, other evidence in the rest of the record supports the § 3B1.1(a) adjustment, so in any case Mason could not demonstrate that he was harmed. *See United States v. Are*, 590 F.3d 499, 523 (7th Cir. 2009). Factors that suggest a leadership role under U.S.S.G. § 3B1.1 include the exercise of decision-making authority, the nature of the participation, the recruitment of accomplices, the claimed right to a larger share of the profits, the degree of participation in planning or organizing, the nature and scope of the activity, and the control exercised over others in the organization. U.S.S.G. § 3B1.1, cmt. 4. The evidence here readily supports a "commonsense judgment" that Mason was a leader of the organization. *See Jones*, 56 F.4th at 493. Judge Wood found, for instance, that Mason had a central, decision-making role in the organization, using his own home to process drugs. Moreover, recorded phone calls by Mason revealed he discussed overall sales, strategies to increase yield, and negotiations for wholesale drug quantities. He also exerted control, as he admitted in his plea declaration that others in the organization worked at his direction. The evidence is more than sufficient to support the enhancement.

AFFIRMED

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 24, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3129

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

v.

No. 1:18-CR-00157-1

JONATHON MASON,
Defendant-Appellant.

Andrea R. Wood,
Judge.

ORDER

On consideration of appellant's petition for rehearing with suggestion for rehearing en banc, no judge in regular active service has requested a vote on the petition for rehearing en banc¹ and the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that the petition for rehearing with suggestion for rehearing en banc is DENIED.

¹ Circuit Judge John Z. Lee did not participate in the consideration of this petition for rehearing en banc.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



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NOTICE OF ISSUANCE OF MANDATE

October 2, 2024

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604-0000

	UNITED STATES OF AMERICA, Plaintiff - Appellee
No. 23-3129	v. JONATHAN MASON, Defendant - Appellant
Originating Case Information:	
District Court No: 1:18-cr-00157-1 Northern District of Illinois, Eastern Division District Judge Andrea R. Wood	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

This notice sent to:

United States Probation Officer

form name: **c7_Mandate** (form ID: 135)