

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

OMARI PATTON — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

APPENDIX IN SUPPORT OF PETITION  
\_\_\_\_\_

A through P

APPENDIX A Opinion of The United States Court of Appeals

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 23-2101

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UNITED STATES OF AMERICA

v.

OMARI HOWARD PATTON,  
Appellant

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On Appeal from the United States District Court  
for the Western District of Pennsylvania  
(D.C. Criminal No. 2-22-cr-00121-001)  
District Judge: Honorable William S. Stickman IV

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
September 9, 2024

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Before: CHAGARES, Chief Judge, ROTH and RENDELL, Circuit Judges

(Filed: December 5, 2024)

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OPINION\*

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

APPENDIX A

II.<sup>1</sup>

Patton argues that the District Court's sentence was erroneous because it: (1) miscalculated the drug quantity attributable to Patton; (2) applied an aggravating role enhancement; (3) applied a use-of-affection enhancement; and (4) was substantively unreasonable. We will consider each contention in turn.

## A.

Patton contends that the 26.6 kilograms of Converted Drug Weight ("CDW") attributed to his sentence is erroneous because the government tested only ten of the nineteen seized sheets for K2.<sup>2</sup> We disagree. It is permissible to extrapolate drug weight so long as "there is an adequate basis in fact for the extrapolation" and "the quantity was determined in a manner consistent with accepted standards of reliability." United States v. Titus, 78 F.4th 595, 600 (3d Cir. 2023) (quoting United States v. McCutchen, 992 F.2d 22, 25–26 (3d Cir. 1993)). In Titus, a doctor was convicted of writing illegal prescriptions. Id. at 599–600. We held that the district court erred in sentencing by extrapolating from only twenty-four patient files to infer the illegality of thousands of prescriptions because, inter alia, the doctor stored his lawful patient files and

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<sup>1</sup> The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291. We review the District Court's factual findings relevant to the Sentencing Guidelines for clear error and its interpretation of the Guidelines de novo. United States v. Waterman, 755 F.3d 171, 174 (3d Cir. 2014). We may affirm the District Court on any ground supported by the record. United States v. Stanford, 75 F.4th 309, 316 (3d Cir. 2023).

<sup>2</sup> Because the Guidelines' drug quantity table does not list synthetic cannabinoids, the government's CDW calculation relied on the Guidelines' drug conversion table. See U.S.S.G. § 2D1.1 Application Note 8(D). Patton does not dispute this conversion.

received little or no compensation from the illegal purchase, sale, transport, or storage of controlled substances, and [3] the individual had minimal knowledge of the scope and structure of the enterprise.” U.S.S.G. § 2D1.1(b)(16)(A) (cleaned up).<sup>3</sup>

Patton contends that he did not “use” affection to involve Burley in the drug operation. He relies on United States v. Aguilar-Alonzo, 944 F.3d 544 (5th Cir. 2019), for the proposition that “using” a person’s affection must be active rather than passive and that a familial relationship, on its own, is insufficient. Id. at 551. We need not decide whether Patton’s interpretation of “use” is correct because the record shows that Patton “used” Burley under any sense of the word. Patton developed an interest in Burley only after his son turned sixteen and obtained his driver’s license, and when Burley “wanted a break” from running his father’s errands, Patton did not “respect[.]” his wishes and their relationship became “rocky.” Appendix (“App.”) 522. The District Court’s findings that Patton took advantage of Burley’s desire for a father figure and employed affection to recruit him into his drug operation were not clearly erroneous.

Patton also argues that the District Court did not address the third element of this enhancement and could not have found it satisfied because Burley’s knowledge of the drug operation was “comprehensive and detailed.” Patton Br. 38. But the District Court did make this finding. App. 534. And the record shows that Burley did not understand what the K2 paper was for and how it was being used. For example, Burley thought Patton intended to smoke the K2 himself to cope with an alleged addiction, and Burley

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<sup>3</sup> The use-of-affection enhancement applies only if Patton receives a § 3B1.1 (aggravating role) enhancement. That is satisfied here, see supra Part II(B).

regard to purity or concentration.” (citing U.S.S.G. § 2D1.1(c) n.(A))). Patton claims that a recent amendment to the Guidelines’ commentary makes an exception for “synthetic cannabinoid diluted with an unusually high quantity of base material.” U.S.S.G. § 2D1.1 cmt. 27(E)(i). But Patton acknowledges that the nineteen pages contained 9.5 kilograms of CDW — over a third of the total paper weight — and in any event the Guidelines accord the District Court discretion not to give a downward departure in this situation. Id. Thus, the District Court did not abuse its discretion in giving Patton a 63-month sentence.

### III.

For the foregoing reasons, we will affirm the judgment of sentence imposed by the District Court.