

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DREW JUSTICE WINDSOR, also known as “Justice Windsor”,
Petitioner

V.

UNITED STATES OF AMERICA,
Respondent

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

APPENDICES

APPENDIX A-1

**(OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT)**

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

No. 17-10115
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 22, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DREW JUSTICE WINDSOR, also known as Justice Windsor,

Defendant-Appellant

Appeals from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CR-132-18

Before BENAVIDES, SOUTHWICK, and COSTA, Circuit Judges.

PER CURIAM:*

Drew Justice Windsor pleaded guilty to conspiracy to possess with intent to distribute a mixture and substance containing a detectable amount of methamphetamine. He now appeals his sentence.

The district court did not clearly err by applying the dangerous weapon enhancement pursuant to U.S.S.G. § 2D1.1(b)(1). *See United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008). The district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 17-10115

finding that Windsor's coconspirator used an incorrect date in asserting that she frequently saw Windsor with a gun during drug deals is plausible in light of her assertion that she had known Windsor for two years prior to her arrest. *See United States v. King*, 773 F.3d 48, 52 (5th Cir. 2014). Windsor does not re-urge and therefore waives his argument challenging two witness statements that bolstered the co-conspirator's assertion. *See United States v. Pompa*, 434 F.3d 800, 806 n.4 (5th Cir. 2005).

Additionally, because the methamphetamine that Windsor received from the coconspirator had been imported from Mexico, the district court did not err by applying the § 2D1.1(b)(5) enhancement, regardless of whether he knew it was imported. *See United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012). His contention that the importation should have to constitute relevant conduct under U.S.S.G. § 1B1.3 does not establish error in the application of the § 2D1.1(b)(5) enhancement. *See United States v. Foulks*, 747 F.3d 914, 915 (5th Cir. 2014).

Finally, Windsor's within-guideline sentence is entitled to a presumption of reasonableness. *See Rita v. United States*, 551 U.S. 338, 341 (2007). His argument that the 18 U.S.C. § 3553(a) sentencing factors fail to account for prevailing notions of what society deems a fair sentence amounts to a general disagreement with the propriety of the sentence imposed and does not suffice to show substantive unreasonableness. *See Gall v. United States*, 552 U.S. 38, 50-51 (2007); *United States v. Rodriguez*, 523 F.3d 519, 526 (5th Cir. 2008).

The judgment of the district court is AFFIRMED.

APPENDIX A-2

(DISTRICT COURT JUDGMENT IN A CRIMINAL CASE)

United States District CourtNorthern District of Texas
Fort Worth DivisionJAN 13 2017
CLERK, U.S. DISTRICT COURT
By _____ Deputy

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:16-CR-132-A(18)

DREW JUSTICE WINDSOR, a/k/a "Justice Windsor"

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, DREW JUSTICE WINDSOR, a/k/a "Justice Windsor", was represented by Brett D. Boone.

The defendant pleaded guilty on August 17, 2016 to the 1 count superseding information filed on August 17, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

Title & Section / Nature of Offense

21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(C))

Conspiracy to Possess with Intent to Distribute a Controlled Substance

Date Offense Concluded

04/2016

Count

1

On motion of the United States, the court ORDERS as to this defendant that the superseding indictment and the third superseding indictment be, and are hereby, dismissed.

As pronounced and imposed on January 13, 2017, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 240 months. The sentence of 240 months shall run concurrently with the sentences of imprisonment in Case Nos. 1378963D, 1360633D, 1362428D, and 1377726D in the 372nd District Court of Tarrant County, Texas, and are related to the instant offense. Further, the defendant shall receive credit for the time already served on these sentences. The sentence in this case shall run consecutively to the

sentence imposed in Case No. 1384433D in the 372nd District Court of Tarrant County, Texas, which is unrelated to the instant offense.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$20 per month.
6. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$20 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.

4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

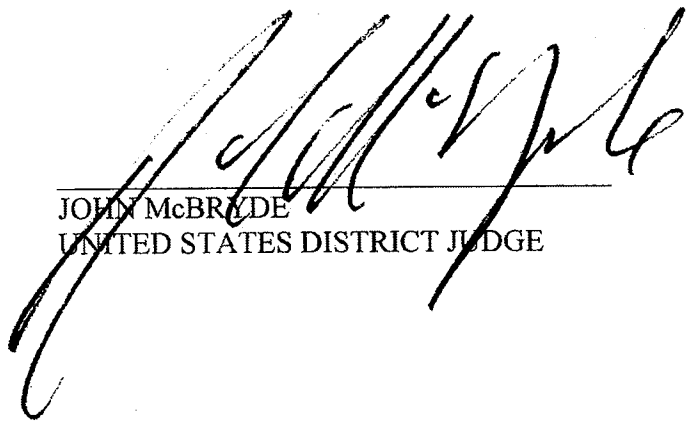
FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 13th day of January, 2017.



JOHN McBRIDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2017 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal