NONPRECEDENTIAL DISPOSITION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

Submitted September 29, 2025
Decided September 30, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1251

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EDUARDO LUCIANO,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

No. 2:18CR007-002

Jon E. DeGuilio,
Judge.

ORDER

Eduardo Luciano was convicted by a jury of crimes related to gang activity, drug possession, and two murders. He was sentenced to life in prison. Luciano filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel explains the nature of the case and addresses the potential issues that an appeal like this could involve. Because the analysis appears thorough, we limit our review to the subjects that counsel discusses, *see United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014), and the issues

Luciano raises in response, *see* CIR. R. 51(b).* We grant the motion and dismiss the appeal.

Luciano was a leader of the Latin Counts gang in Hammond, Indiana. The Latin Counts frequently engaged in drug dealing and violence, particularly against a rival gang known as the Latin Kings. One day in 2015, Luciano noticed a large crowd of Latin Kings and other community members holding a vigil. Luciano met with three other Latin Counts and made a plan to shoot into the crowd, with the goal of killing Latin Kings. Two Latin Counts, not including Luciano, drove to the vigil and opened fire, killing a 16-year-old girl and a former Latin King.

In February 2020, Luciano was charged with one count of conspiring to participate in racketeering activity, 18 U.S.C. § 1962(d); one count of conspiring to possess with intent to distribute marijuana and cocaine, 21 U.S.C. § 846; and two counts of using a firearm in relation to murder, 18 U.S.C. §§ 2, 924(c)(1)(A), (j).

1. Pretrial Motions

Counsel first considers challenging the district court's rulings in limine. Relevant here, Luciano's trial attorney had opposed the government's motion to prohibit the lawyers from defining "beyond a reasonable doubt" to the jurors. Trial counsel anticipated that he would want to discuss and define reasonable doubt throughout the trial, as he said was permissible in Indiana court. But appellate counsel rightly rejects this challenge because, as we have repeatedly admonished, lawyers should not define "reasonable doubt" to a jury in criminal prosecutions. *United States v. Alt*, 58 F.4th 910, 919 (7th Cir. 2023).

2. Trial

a. Juror Issues

Counsel also considers raising two potential juror issues but rightly concludes that it would be frivolous to do so. First, counsel considers challenging the district court's decision to remove an alternate juror who fell asleep multiple times during the first couple days of testimony at trial. But a district court has ample discretion in choosing how to handle a sleeping juror, *see United States v. Freitag*, 230 F.3d 1019, 1023

* Luciano later moved for counsel and raised additional arguments. We construe the motion as one to supplement the Rule 51(b) response, grant the motion, and consider both his filings.

(7th Cir. 2000), and we see no error in removing a juror who slept through parts of a witness's testimony.

Second, counsel considers arguing that the district court should have removed one juror, who, after opening statements and the start of testimony, alerted the court that she used to clean the house of the mother of one of the prosecuting attorneys. But to prevail on appeal, Luciano would have to show that the juror did not honestly answer a material question on voir dire and that a correct answer would have supported a challenge for cause. *United States v. Benabe*, 654 F.3d 753, 780–81 (7th Cir. 2011). And the record does not support a valid for-cause challenge because the juror in question unequivocally assured the court that she could be fair and impartial to both parties. *See United States v. Taylor*, 777 F.3d 434, 440–41 (7th Cir. 2015).

In his Rule 51(b) response, Luciano insists on arguing that failing to remove the juror was a structural error, meaning that the error could never be treated as harmless. *See Gomez v. United States*, 490 U.S. 858, 876 (1989). But the court did not err in retaining the juror, so there is no reason to consider harmlessness.

b. Sufficiency of Evidence

Counsel next considers but rightly rejects challenging the sufficiency of the evidence to convict. We would reverse only if no rational jury could have found Luciano guilty beyond a reasonable doubt. *United States v. Johnson*, 874 F.3d 990, 998 (7th Cir. 2017). But the government introduced sufficient evidence for each count. For the racketeering conspiracy, the parties stipulated that the Latin Counts were an enterprise, and testimonial evidence—from law enforcement, other Latin Counts, and rival Latin Kings—established that Luciano led the gang in acts of violence and drug distribution. For the drug conspiracy, two Latin Counts testified to the conspiracy and Luciano's personal involvement. As for the two firearm offenses, even though all witnesses agreed that Luciano was not present at the shooting, his co-conspirators testified that he played an active role in its planning.

In his Rule 51(b) response, Luciano proposes contesting the evidence that he used a firearm in violation of 18 U.S.C. § 924(j). He argues that his convictions cannot rely on the uncorroborated testimony of a co-conspirator who initially was charged as the conspiracy's leader. *See United States v. Nichols*, 910 F.2d 419, 421 (7th Cir. 1990). But it is well established that jurors may rely on a co-conspirator's uncorroborated testimony. *United States v. Ofcky*, 237 F.3d 904, 909 (7th Cir. 2001); *see also United States v. Henderson*, 58 F.3d 1145, 1148–49 (7th Cir. 1995); *United States v. Byerley*, 999 F.2d 231,

235 (7th Cir. 1993). And anyway, more than one of Luciano's co-conspirators corroborated Luciano's role in planning the shooting.

c. Credibility of Cooperating Witnesses

At Luciano's urging, counsel considers but rightly rejects challenging the credibility of Luciano's co-conspirators, who agreed that Luciano was at least one of two leaders who planned the shooting. It was up to the jury to weigh each witness's credibility, accounting for inconsistent details or testimony that was self-serving. And district courts should reserve credibility determinations for the jury unless a witness testifies to seeing something "that would have been physically impossible for them to see or impossible under the laws of nature." *United States v. Nieto*, 29 F.4th 859, 868 (7th Cir. 2022) (citation modified). Neither Luciano nor his counsel points to any impossibilities, and we see none either.

Counsel also rightly declines to challenge the admissibility of Luciano's co-conspirators' statements. Co-conspirators' statements are admissible against a defendant in a conspiracy case. *See* FED. R. EVID. 801(d)(2)(E); *see also United States v. Davis*, 845 F.3d 282, 288 (7th Cir. 2016). The government gave notice that it planned to admit statements from some of Luciano's co-conspirators, *see United States v. Santiago*, 582 F.2d 1128, 1130–31 (7th Cir. 1978), and Luciano confirmed that he did not object to the admission of those statements.

d. Jury Instructions

Counsel next rightly rejects raising a challenge that Luciano wishes to make to a "mere presence" jury instruction. Near the close of evidence, the district court proposed removing the instruction—that Luciano's "mere presence" at the shooting would not be sufficient to convict him—because Luciano was not present at the shooting. Luciano's counsel asked that the instruction be revised to consider Luciano's "mere presence" at the planning meeting. The government objected, arguing that the instruction was not appropriate for aiding-and-abetting charges. Both parties then agreed to an instruction that read: "The government must prove beyond a reasonable doubt that the defendant was present at the time and place of the planning of the offenses. The defendant need not be present at the time and place of the shootings." But by agreeing to the proposed instruction, Luciano waived the issue for appeal. *United States v. LeBeau*, 949 F.3d 334, 341–42 (7th Cir. 2020).

e. Jury Verdict Form

In his Rule 51(b) response, Luciano generally proposes arguing that the jury verdict form did not comply with the Supreme Court's holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). But Luciano does not point to any fact that was not submitted to the jury and proved beyond a reasonable doubt, as required by *Apprendi*, *see id.* at 476, nor have we found one in our independent review of the record.

f. Ineffective Assistance of Counsel

Counsel mentions that Luciano would like to argue that his trial attorneys were ineffective but correctly notes that any challenge to Luciano's criminal judgment based on ineffective assistance of counsel is best saved for collateral review, where a record can be fully developed. *See Massaro v. United States*, 538 U.S. 500, 503–05 (2003).

3. Sentencing

a. Statutory Maximums

Counsel correctly explains that Luciano's sentence did not exceed the statutory maximum for any of the four charges. The maximum sentences for his racketeering and firearm charges were life, 18 U.S.C. §§ 1962(d), 1963(a), 924(j)(1), and the maximum sentence for his drug charge was 20 years, 21 U.S.C. §§ 846, 841(b)(1)(C).

b. Calculation of Guidelines Range

Counsel next correctly concludes that the district court properly calculated the guidelines range. Luciano's base offense level was 43 because the underlying racketeering activity was murder. U.S.S.G. §§ 2A1.1(a), 2E1.1(a)(2). The court properly added four levels based on Luciano's role in the offense and two levels for the combination of multiple offenses. *See id.* §§ 3B1.1(a), 3D1.4. Even if the court incorrectly applied those adjustments, Luciano's offense level would still be 43, the highest possible offense level. *See id.* § 5A, cmt. n.2. Counsel also points out that although Luciano received the lowest possible criminal history category, he did not qualify for a reduction as a zero-point offender because he had one criminal history point and his current offense resulted in death. *Id.* § 4C1.1(a)(1), (4).

c. Unwarranted Disparities

Counsel tells us that Luciano would like to argue that his sentence created an unwarranted sentencing disparity because his co-conspirators' sentences were much lower than his. But counsel correctly concludes that any such argument would be

frivolous. At sentencing, the district court must consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). And here the district court distinguished Luciano's conduct from that of his co-conspirators, finding that it was more serious and that he did not accept responsibility. Further, we presume that Luciano's within-guidelines sentence implicitly accounts for consistency among similarly situated defendants. *See United States v. King*, 910 F.3d 320, 330 (7th Cir. 2018).

d. Substantive Reasonableness

We also agree with counsel that any challenge to the substantive reasonableness of Luciano's within-guidelines sentence would be frivolous. We presume a within-guidelines sentence to be reasonable. *See United States v. Jones*, 56 F.4th 455, 513 (7th Cir. 2022). The district court adequately justified the life term based on the sentencing factors in 18 U.S.C. § 3553(a). *See United States v. Cook*, 108 F.4th 574, 580 (7th Cir. 2024). The court appropriately balanced the nature and circumstances of the offense (noting that they were "shockingly violent and showed an incomprehensible amount of disregard for human life") with Luciano's history and characteristics (considering his difficult upbringing, role as a father, deceptively low criminal history category, "severe substance abuse issues," and consistent employment). *See* 18 U.S.C. § 3553(a).

e. Supervised Release

Lastly, counsel correctly rejects as frivolous any argument that the district court erred by imposing concurrent three-year terms of supervised release on each count. The court's reasons for imposing the term of imprisonment were sufficient to justify the term of supervised release. *See United States v. Bloch*, 825 F.3d 862, 869–70 (7th Cir. 2016). And counsel correctly concludes that Luciano waived any appellate challenge to the conditions of supervised release when he told the district court that he did not object to them. *See United States v. Flores*, 929 F.3d 443, 449 (7th Cir. 2019.)

As a final note, we were unable to find some of the cases Luciano cited in his Rule 51(b) response. Whether these errors were the result of mistaken transcription or the use of generative AI, we encourage all litigants to carefully review their submissions before filing in this court.

We thus GRANT counsel's motion to withdraw, DENY Luciano's motion to appoint new counsel, and DISMISS the appeal.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

November 5, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

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Jon E. DeGuilio,
Judge.

ORDER

On consideration of the motion for panel rehearing, the judges on the original panel voted to deny rehearing. It is, therefore, **ORDERED** that the motion for panel rehearing is **DENIED**.