NONPRECEDENTIAL DISPOSITION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 October 1, 2024
Decided October 21, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 23-3072

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ELIJAH JACKSON,
Defendant-Appellant.

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

No. 3:23CR09-001

Damon R. Leichty,
Judge.

O R D E R

Elijah Jackson pleaded guilty to possessing a firearm as a felon. *See* 18 U.S.C. § 922(g)(1). At sentencing, the district court applied an enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for possessing firearms in connection with an Indiana felony, "Dealing in Marijuana." *See* Ind. Code § 35-48-4-10(c). Jackson appeals his sentence, arguing that the district court clearly erred in finding that the enhancement applied. Because the

court reasonably found that Jackson committed the felony and that he possessed the firearms in connection with this offense, we affirm.

Jackson's conviction stems from an incident in June 2022. Around 5:45 a.m., police in South Bend, Indiana, received a call from a woman reporting that Jackson had recently left her home after an altercation and she believed she heard a gunshot. An officer responded, saw Jackson, and started trailing him. Jackson then took off. While fleeing, he dropped a backpack, and a long gun magazine broke open, spilling ammunition on the road. Another officer caught Jackson and searched him, finding two loaded guns. Police later recovered the backpack that he had dropped and found two phones, a digital scale, pills that field-tested positive for fentanyl or methamphetamine, and two packages of marijuana that totaled to 31.16 grams. He later pleaded guilty to possessing a firearm as a felon. 18 U.S.C. § 922(g)(1).

Before sentencing, the probation office prepared a presentence investigation report (PSR). The PSR recommended a guidelines range of 57 to 71 months' imprisonment, based on a criminal history category of IV (which included a prior drug offense) and an offense level of 21. The base level for the offense was 20, with three points deducted because Jackson accepted responsibility, and four points added back because he possessed a firearm and ammunition "in connection with another felony offense"—"Dealing in Marijuana" under Indiana law. *See* U.S.S.G. § 2K2.1(b)(6)(B). The PSR explained that under Indiana Code § 35-48-4-10(c)(2)(A), a person with a prior drug conviction who possesses at least 30 grams of marijuana and evidence of drug dealing, as was true of Jackson, commits the felony of dealing in marijuana. And, the PSR continued, because Jackson had possessed a firearm and ammunition "in connection with" that felony, U.S.S.G. § 2K2.1(b)(6)(B) applied. (The PSR states that the enhancement also applies because Jackson possessed methamphetamine or fentanyl. But the district court mentioned this other drug felony only when discussing the sentencing factors under 18 U.S.C. § 3553(a), and the parties do not address it on appeal as a basis for the enhancement.)

The parties debated the enhancement. Jackson argued that the government could not prove by a preponderance of the evidence that he had (1) been dealing marijuana or (2) used the firearms in connection with dealing. He contended that the typical attributes of dealing were missing: He possessed no cutting agents, empty plastic bags, or drug transaction ledgers; he was not traveling to or from a deal; and the "small amount" of marijuana he had (31.16 grams, just over an ounce) and the scale alone did not imply dealing. The government replied that the felony-level weight of the

marijuana implied that Jackson was dealing and, further, the materials inside his backpack—two separated packages of marijuana, a digital scale, and two phones—were typical tools of dealing. Finally, the government argued, the proximity of these items to Jackson's firearms suggested that he used the firearms in connection with drug dealing.

The district court agreed with the government. It observed that "possessing over 30 grams of marijuana" is a felony; Jackson possessed more "than user amounts of marijuana"; the "implements"—two phones, two separated packages, and a scale—implied an intent to sell; and the proximity of the implements to the guns implied that the guns facilitated drug dealing. The court elaborated that, although the proximity of guns to drugs intended for personal use need not imply that the guns facilitated the possession, the proximity of guns to drugs intended for sale, as occurred here, permitted an inference that the guns facilitated drug sales.

The court then sentenced Jackson to a within-guidelines term of 64 months' imprisonment and two years of supervised release.

On appeal, Jackson maintains that the district court wrongly applied the enhancement. The court's application of the sentencing enhancement, U.S.S.G. § 2K2.1(b)(6)(B), presents a mixed question of fact and law, which this court reviews for clear error. *United States v. Ingram*, 40 F.4th 791, 794 (7th Cir. 2022).

Jackson first argues that the district court clearly erred by finding that he had intended to sell the marijuana. He insists that the government had to prove that Jackson could not have personally consumed the 31.16 grams of marijuana found in his backpack. In support, he points to *Montego v. State*, where the Indiana Supreme Court held that a quantity of drugs alone suggests an intent to distribute only if the quantity "could not be personally consumed or utilized and therefore of necessity [is] available for delivery." 517 N.E.2d 74, 76 (Ind. 1987) (citation omitted). The government counters that, although the amount of marijuana Jackson had was "not overwhelming," the district court's finding was nonetheless correct. It cites the Drug Enforcement Administration's statement that a typical marijuana cigarette uses only 0.5 grams, less than 1/60 of Jackson's quantity, to assert that the quantity in Jackson's backpack—a felony-level amount—implied that Jackson was selling. But it also relies on other evidence (the two phones, two separately packaged bags, and digital scale) to argue that, from Jackson's simultaneous possession of these other items, the court could reasonably infer his intent to sell marijuana.

The district court did not clearly err in finding that Jackson intended to sell the marijuana. We may assume that, for a district court to rule that the amount of drugs by itself is a "distribution amount," the prosecution should present evidence undercutting the likelihood that a defendant planned to consume the drugs personally. *See Montego*, 517 N.E.2d at 76. But the district court did not rely solely on the quantity of marijuana to find that Jackson possessed it with intent to distribute it. The district court also relied on Jackson's possession of "implements of the drug trade." And possession of a "relatively large" quantity—in this case, a felony-level quantity—of drugs plus drug-trafficking implements will support a conviction in Indiana for possessing the drugs with the intent to sell them, even against a contention that the quantity could be personally consumed. *Hazzard v. State*, 642 N.E.2d 1368, 1369–70 (Ind. 1994). Thus Jackson's possession of a felony-level amount of marijuana plus the tools of drug dealing permitted the district court to find he intended to sell the drugs.

Jackson's responses are unconvincing. He contends that without classic indicators of an intent to sell marijuana—like large amounts of cash or a ledger—the presence of an ounce of marijuana and a scale was insufficient to raise an inference of dealing. But Jackson ignores the circumstantial evidence that, as a whole, overcame the absence of these classic indicators. Beyond the marijuana quantity and scale, the court also observed that Jackson stored the modest amount of marijuana in two packages, used two phones, and transported everything (including the scale) in an easily discarded backpack. These factors reasonably support an inference of dealing. *See, e.g.*, *Montego*, 517 N.E.2d at 76 (scale was circumstantial evidence of intent to sell cocaine); *Elvers v. State*, 22 N.E.3d 824, 835 (Ind. Ct. App. 2014) (larger quantity of drugs divided into smaller portions supported inference of packaging for sale); *Wilson v. State*, 754 N.E.2d 950, 958 (Ind. Ct. App. 2001) (two pagers suggested intent to deal drugs).

Jackson next argues that, even if he had intended to distribute the marijuana, the district court clearly erred by finding that his firearms were used "in connection with" the marijuana distribution. *See United States v. Briggs*, 919 F.3d 1030, 1033 (7th Cir. 2019). He asserts that the enhancement under U.S.S.G. § 2K2.1(b)(6)(B) is proper when the evidence shows that the firearms at issue "protect[ed] or embolden[ed] the criminal enterprise," *see United States v. Slone*, 990 F.3d 568, 573 (7th Cir. 2021) (quoting *United States v. LePage*, 477 F.3d 485, 489 (7th Cir. 2007)), but the government did not establish that Jackson's firearms did so here.

This argument too is unpersuasive. The enhancement applies when the firearm facilitates a felony, such as by protecting or supporting the felony. *See LePage*, 477 F.3d

at 489. As *LePage* states, and Jackson himself acknowledges, a court can draw that inference when, as here, guns are possessed "along with the materials of a drug trafficker." *LePage*, 477 F.3d at 489; *see also Slone*, 990 F.3d at 572–73. Moreover, Application Note 14(B) of U.S.S.G. § 2K2.1(b)(6)(B) creates a presumption of the enhancement whenever guns are found "in close proximity" to drugs or drug paraphernalia in drug-trafficking cases. *Slone*, 990 F.3d at 572–73. The district court properly used this presumption when applying the enhancement: It stated that "the law says that the enhancement applies" in drug-trafficking cases such as Jackson's, and it then tied the two firearms found on him to his two packages of marijuana, scale, and phones found close by in his discarded backpack. And its finding that the guns discovered on his body were in "close proximity" to the trafficking implements in his backpack also falls squarely within circuit precedent. *See, e.g.*, *LePage*, 477 F.3d at 489 (guns found in defendant's bag along with chemical used to cut methamphetamine and near girlfriend's car containing prepackaged methamphetamine supported enhancement); *Slone*, 990 F.3d at 572 (guns found in basement where defendant conducted drug sales supported enhancement). The court's conclusion that the enhancement applied was therefore not clearly erroneous.

AFFIRMED