

NONPRECEDENTIAL DISPOSITION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 November 19, 2024
Decided November 26, 2024

Before

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2887

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ELIEZER RUIZ,
Defendant-Appellant.

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

No. 1:20-CR-00115(2)

Steven C. Seeger,
Judge.

ORDER

Eliezer Ruiz pleaded guilty to knowingly possessing an unregistered short-barreled rifle. 26 U.S.C. § 5861(d). At sentencing, the district court applied a special offense characteristic for possessing the gun in connection with another felony, which increased Ruiz's offense level by four. U.S.S.G. § 2K2.1(b)(6)(B). On appeal, Ruiz argues that the court erred by finding that he committed a felony. Because the court chose between two plausible ways to interpret the evidence and stated that it would have reached the same sentencing decision regardless, we affirm Ruiz's sentence.

On July 19, 2019, Ruiz was riding with James Lowry in Lowry's van when they rear-ended Victim A's car. All three men got out of their cars, and when Victim A took out his cell phone to take a picture of Lowry's license plate, Lowry pulled out a knife and threatened Victim A. Ruiz then punched Victim A in the face. Ruiz and Lowry fled in Lowry's van, and Victim A pursued them in his car. Lowry stopped the van twice. The first time, Lowry got out of the car with a short-barreled rifle but did not fire. The second time, Lowry stopped in an alley, got out of the van, and fired six shots at Victim A's car. Victim A was not struck.

Lowry then got back in the van and handed the rifle to Ruiz, who put it in a bag, jumped out of the van, and fled on foot while Lowry drove away. Ruiz told a passerby that he had a gun in the bag before hiding it in a trash can in a nearby alley. Before arresting Ruiz or even suspecting him of being involved, police officers questioned him and the passerby. Ruiz lied and told them that Victim A had fired a gun. Ruiz later returned to the trash can, and officers arrested him. Ruiz then told police officers what happened and asked for protection from Lowry.

A grand jury charged Lowry with possessing ammunition as a convicted felon, 18 U.S.C. §§ 922(g)(1), 924(e), and both Lowry and Ruiz for knowingly possessing an unregistered short-barreled rifle, 26 U.S.C. § 5861(d).

Under an agreement with the government, Ruiz pleaded guilty. The parties agreed that, under the Sentencing Guidelines, Ruiz would have a base offense level of 18 under U.S.S.G. § 2K2.1(a)(5), but they disagreed about whether to apply a four-level increase for possessing the firearm in connection with another felony, § 2K2.1(b)(6)(B). (The government asserted that Ruiz had possessed the weapon in connection with the federal offense of aiding and abetting attempted murder and the Illinois offense of obstruction of justice.) The government agreed that both the two- and one-level reductions in offense level for acceptance of responsibility were appropriate. U.S.S.G. § 3E1.1(a)–(b).

A probation officer prepared a presentence investigation report (PSR). As relevant to this appeal, the PSR applied the four-level increase based on the connection of the firearm possession to another felony offense. U.S.S.G. § 2K2.1(b)(6)(B).

In their sentencing memoranda, each party attempted to interpret Ruiz's motivation for hiding the gun after the shooting. Ruiz argued that he hid the gun only to avoid getting caught with it himself, citing the evidence from a police report that he told a passerby that he had a gun. The government, on the other hand, argued that if

Ruiz were only looking out for himself, he could have left the gun in the van or simply dropped it in the alley. The government also contended that Ruiz covered up for Lowry by lying to police officers about the circumstances of the shooting (that Victim A had fired) rather than telling the truth or staying silent.

Overruling Ruiz's objections, the court concluded that the four-level increase applied. Finding that Ruiz and Lowry acted as a team and that Ruiz intended to protect Lowry, the court found by a preponderance of the evidence that Ruiz hid the gun in the trash can with the intent to conceal Lowry's crime and therefore committed at least two felonies: accessory after the fact to attempted murder and obstruction of justice.

These conclusions led to a total offense level of 19 under § 2K2.1. With a criminal history category of I, Ruiz's guidelines range was 30 to 37 months in prison. The court ultimately sentenced Ruiz to 37 months' imprisonment and 3 years' supervised release.

Guideline § 2K2.1(b)(6)(B) provides for a four-level enhancement for possession of a firearm in connection with another felony. It "applies when a preponderance of the evidence connects the defendant's use or possession of a firearm to another felony offense, even if the defendant was neither charged for nor convicted of the second crime." *United States v. Ingram*, 40 F.4th 791, 794 (7th Cir. 2022). On appeal, Ruiz challenges the application of this enhancement. In particular, he contests the finding that he acted as an accessory after the fact to attempted murder. Encompassed in this argument is the assertion that he necessarily lacked the similar state of mind required for obstruction of justice, so we need not address the two offenses separately. This court reviews the district court's factual findings (such as Ruiz's motivation for hiding the rifle) for clear error and its application of the Sentencing Guidelines de novo. *United States v. Kopp*, 922 F.3d 337, 341 (7th Cir. 2019).

Ruiz contends that no reliable evidence suggests that he hid the gun to help or protect Lowry, so he could not have obstructed justice or been an accessory to attempted murder. See *United States v. Tipton*, 3 F.3d 1119, 1123 (7th Cir. 1993) (obstruction of justice); *United States v. Bell*, 819 F.3d 310, 323 (7th Cir. 2016) (accessory after the fact). Ruiz argues that, in fact, clear evidence shows that he was not attempting to protect Lowry. By taking the gun away from Lowry, for example, he protected the victim and the public, leaving Lowry unarmed. And, he contends, evidence that he told a bystander about the gun and eventually cooperated with police demonstrates that he did not intend to obstruct the investigation of the shooting.

But the district court did not clearly err by finding by a preponderance of the evidence that Ruiz acted with the necessary intent to cover up Lowry's shooting. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. McGraw*, 571 F.3d 624, 629 (7th Cir. 2009) (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)). Here, the district court was presented with two competing stories based on the same evidence. It therefore could not have clearly erred by choosing between them.

Moreover, there was more than sufficient evidence to support the district court's findings by a preponderance of the evidence. Ruiz witnessed Lowry threaten Victim A with the rifle and fire six shots at Victim A's car. After the shooting, Lowry handed Ruiz the rifle he had used to shoot at Victim A and Ruiz placed it in a bag. Ruiz jumped out of the car with the rifle in the bag, and he hid the rifle in a trash can in a nearby alley. He then lied to the police about the shooter. Based on this evidence, the district court did not err in imposing the enhancement.

Furthermore, any error in applying § 2K2.1(b)(6)(B) here would have been harmless. "A court's statement that 'it would have imposed the same sentence,' even if it had improperly calculated the defendant's Guidelines range, renders the error harmless." *United States v. Cook*, 108 F.4th 574, 583 (7th Cir. 2024) (quoting *United States v. Shelton*, 905 F.3d 1026, 1031 (7th Cir. 2018)). And here, the district court stated that, even if it had calculated the guidelines differently, Ruiz would have received the same sentence of 37 months' imprisonment. For a so-called "inoculating" statement to be valid, it must be detailed, and it must consider the parallel result. *United States v. Caraway*, 74 F.4th 466, 468–69 (7th Cir. 2023) (citing *United States v. Asbury*, 27 F.4th 576, 581–82 (7th Cir. 2022)). Here, the court specifically considered Ruiz's disputes to its guidelines calculation and determined that, even if Ruiz were correct, it would not affect the ultimate outcome.

AFFIRMED