

NONPRECEDENTIAL DISPOSITION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 November 4, 2025*

Decided November 5, 2025

Before

MICHAEL B. BRENNAN, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-3123

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BYRON BLAKE,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:06-CR-30146-NJR-1

Nancy J. Rosenstengel,
Chief Judge.

ORDER

Byron Blake, a federal prisoner, appeals the denial of his motion for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2). Because the district court did not clearly err in finding that Blake was responsible for at least 8.4 kilograms of crack cocaine, we affirm.

* This appeal is success to case no. 22-1569 and under Operating Procedure 6(b) is decided by the same panel. We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In March 2007, after a federal and state investigation into suspected drug dealers, Blake was charged with one count of conspiracy to distribute and possess with intent to distribute fifty or more grams of cocaine base, *see* 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 846, one count of distribution of fifty or more grams of cocaine base, *see* § 841(a)(1), (b)(1)(A), and one count of distribution of cocaine, *see* § 841(a)(1), (b)(1)(C). Blake’s codefendant, Ryan Ivory, pleaded guilty to one count of conspiracy to distribute and possess with intent to distribute fifty or more grams of cocaine base. *See* §§ 841(a)(1), (b)(1)(B), 846.

At trial, Ivory testified that from March 2005 to October 2006, Blake would “front” him crack and powder cocaine, and after Ivory sold the drugs, he would repay Blake. Ivory testified that at the start of this arrangement, Blake would sell him one-ounce quantities of crack or powder cocaine every three days. Ivory later testified that he bought 4.5 ounces of “usually crack” from Blake on a weekly basis. A confidential informant testified that he and another informant purchased a total of 16.5 ounces (or .46 kilograms) of crack from Blake through Ivory. A special agent, Jeffrey Matthews, also testified that Blake was a supplier of crack cocaine to several distributors in the area. The jury found Blake guilty of conspiracy to distribute and possess with intent to distribute crack cocaine and distribution of base and powder cocaine. *See* §§ 841(a)(1), (b)(1), 846.

At the sentencing hearing, the district court imposed a below-guidelines sentence of 420 months’ imprisonment, relying in part on the PSR’s calculation that Blake was responsible for 13 kilograms of crack cocaine. The PSR relied on Ivory’s testimony that Blake had provided him with 4.5 ounces of crack every week for two years to calculate the 13-kilogram quantity. Matthews testified that—based on wiretaps, physical surveillance, and testimony from confidential informants—Blake supplied multi-ounce quantities of powder and crack cocaine on numerous occasions to at least eight distributors.

Blake appealed and we affirmed his conviction and sentence. But we concluded that there were discrepancies in Ivory’s testimony that called into question the court’s reliance on the PSR’s determination that Blake was responsible for 13 kilograms of crack. *See United States v. Blake*, 286 F. App’x 337, 339–40 (7th Cir. 2008). We pointed out, based on Ivory’s testimony, that Blake and Ivory’s arrangement had lasted 19 months rather than two years, and that Ivory did not always buy crack cocaine from Blake. We affirmed Blake’s sentence, however, because the “court needed only to believe that over the course of their relationship, Blake fronted Ivory a total of 1.5 kilograms of crack,

which is equivalent to only 12 deliveries of 4.5 ounces of crack, or about three months of the relationship Ivory claimed lasted for two years.” This was because, at the time, the district court needed to find only that Blake was responsible for 1.5 kilograms of crack to reach the base offense level of 38.

In January 2022, we reviewed Blake’s sentence a second time when he appealed the denial of his motion for a sentence reduction under the First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194. We remanded with instructions for the court to address the reduced penalties for offenses involving crack cocaine made retroactive by the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372. *See United States v. Blake*, 22 F.4th 637, 640–41 (7th Cir. 2022). Under the new law, the 1.5 kilograms previously attributed to Blake would have resulted in a guidelines range of 292 to 365 months’ imprisonment. *Id.* at 643. Because the district court did not address whether the record could support a drug quantity of 2.8 kilograms—the quantity then necessary to yield a guidelines range of 360 months to life—we remanded for the district court to make that factual finding in the first instance. *Id.*

On remand, the district court found that Blake was responsible for more than 2.8 kilograms but less than 25.2 kilograms of crack cocaine. *United States v. Blake*, No. 3:06-CR-30146-NJR, 2022 WL 797485 at *6 (S.D. Ill. 2022). The court did not decide whether Blake was responsible for more than 8.4 kilograms of crack cocaine because that distinction would have had no effect on Blake’s guidelines range at the time. For other reasons not relevant to this appeal, the court reduced Blake’s sentence to 360 months’ imprisonment.

Blake appealed again and argued that the district court erred by not applying the holding of an intervening case, *United States v. Barnes*, 602 F.3d 790, 796–97 (7th Cir. 2010), to attribute to him the same quantity of crack, 500 grams, as his codefendant Ivory. We affirmed Blake’s sentence because, among other reasons, the First Step Act does not require district courts to apply intervening judicial decisions. *See United States v. Blake*, No. 22-1569, 2023 WL 5839584, at *2 (7th Cir. 2023) (discussing *United States v. Fowowe*, 1 F.4th 522, 532 (7th Cir. 2021)).

In June 2024, Blake moved for a sentence reduction under § 3582(c)(2), arguing that his sentence should be reduced to 324 months because the retroactive application of Part A to Amendment 821 to U.S.S.G. § 4A1.1 reduced his criminal history category from III to II, and he has exhibited positive changes while incarcerated. Blake argued that because the district court determined that he was responsible for at least 2.8

kilograms of crack cocaine, his relevant conduct would result in a lower base level offense of 34, *see* U.S.S.G. § 2D1.1(c)(3), plus four levels for leadership, *see* U.S.S.G. § 3B1.1(a), and two levels for obstruction of justice, *see* U.S.S.G. § 3C1.1, yielding a total offense level of 40. And because his criminal history category should be reduced from III to II, his guidelines range would be 324 to 405 months' imprisonment. *See* U.S.S.G. Ch. 5, Pt. A, Sentencing Table.

The district court determined that Blake's criminal history category should be reduced from III to II but declined to reduce his sentence because, based on Ivory's testimony and other relevant parts of the record, the quantity of crack attributable to Blake was approximately 10.5 kilograms. In other words, the court determined that even with an amended criminal history category of II, Blake's guidelines range—360 months to life—was unchanged because the evidence supported a drug quantity of more than 8.4 kilograms but less than 25.2 kilograms of crack. *See* § 2D1.1(c)(2); Ch. 5, Pt. A, Sentencing Table.

That brings us to the present appeal. Blake first argues that the court failed to resolve inconsistencies in Ivory's testimony about the length of time that Blake fronted him drugs and the type of drug that was supplied. We review a district court's factual findings about uncharged drug quantity for clear error. *United States v. Freeman*, 815 F.3d 347, 353 (7th Cir. 2016).

We have previously pointed out that there were "unexplained discrepancies" in Ivory's trial testimony. *See Blake*, 286 F. App'x at 340. For example, Ivory testified that when he began buying from Blake, he only purchased one-ounce quantities of powder cocaine or crack cocaine every three days. But Ivory later testified that Blake started fronting him larger 4.5 ounces of "usually crack" "about two years ago" on a "weekly basis." Ivory was also unclear about whether Blake fronted him primarily crack cocaine or powder cocaine.

But Blake does not argue that Ivory's testimony was incredible, only that it was inconsistent. And inconsistencies do not render a witness's testimony incredible. *United States v. Tate*, 822 F.3d 370, 374 (7th Cir. 2016). After all, determining drug quantities is difficult and "district courts may make reasonable though imprecise estimates based on information that has indicia of reliability." *Id.* (quoting *United States v. Bozovich*, 782 F.3d 814, 818 (7th Cir. 2015)).

Ivory's testimony did not lack indicia of reliability, *see United States v. Holding*, 948 F.3d 864, 870–71 (7th Cir. 2020), and, even if internally discordant, it nonetheless supports the court's finding that Blake was responsible for at least 8.4 kilograms of crack. Although Ivory's testimony might also support a finding that Blake was responsible for less than 8.4 kilograms of crack, where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *United States v. Agbi*, 84 F.4th 702, 711 (7th Cir. 2023) (citing *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)). To estimate drug quantity, district courts can multiply the minimum quantity of drugs a witness bought by the number of occasions the drug was bought. *United States v. Fleming*, 676 F.3d 621, 627 (7th Cir. 2012). To meet the 8.4-kilogram threshold in § 2D1.1(c)(2), the record must therefore show that Blake delivered 4.5-ounce quantities of crack cocaine on at least 66 occasions within the 19-month period of the fronting arrangement. Ivory testified that he purchased 4.5 ounces of "usually crack" from Blake on a weekly basis but would often purchase multiple 4.5-ounce quantities in a week when he needed more to meet demand.

So if, as Blake contends, his arrangement with Ivory began with much smaller deliveries of crack and sometimes powder cocaine, the record still supports the court's finding that Blake was responsible for at least 8.4 kilograms of crack. The court also relied on evidence of other drug transactions that were part of the same course of conduct or common scheme. *See United States v. Rollerson*, 7 F.4th 565, 572–73 (7th Cir. 2021); *see also* U.S.S.G. § 1B1.3. Uncontested portions of the PSR reveal that Blake sold multi-ounce quantities of crack cocaine to other distributors. And the testimony of an informant and Special Agent Matthews about the quantities Blake sold to other distributors support additional quantities of crack attributable to Blake.

Blake next argues that the court erroneously shifted to him the government's burden to establish a reliable evidentiary basis for the relevant drug quantity. *See United States v. Gibbs*, 26 F.4th 760, 765–66 (7th Cir. 2022). We disagree. Granted, the government did not attempt to resolve the discrepancies in Ivory's testimony. But the government met its burden by pointing to the portions of Ivory's testimony that support the 8.4-kilogram quantity and other corroborating evidence—the testimony of two informants and a special agent. *See id.* at 765. The burden then shifted to Blake to show that the information was inaccurate or unreliable. *See id.* And, as previously discussed, Blake did not point to any evidence, other than the inconsistencies that we have already addressed, that called into question the court's determination that Blake was responsible for at least 8.4 kilograms of crack.

Lastly, Blake argues that the court erred when it failed to apply the holding of *United States v. Barnes*, 602 F.3d 790, 796–97 (7th Cir. 2010), that district courts cannot use one drug quantity for a cooperator and a higher quantity for a coconspirator who went to trial if the record is the same with respect to each defendant. But *Barnes* was decided after Blake was sentenced, and the court was not required to apply intervening case law. See *Fowowe*, 1 F.4th at 531–32. Blake contends that *Fowowe* does not apply because he sought a sentence reduction under § 3582(c)(2), not the First Step Act, see Pub. L. No. 115-391, § 404(b), 132 Stat. 5194. But Blake cites no authority for the proposition that the district court must apply the holding in *Barnes* when faced with a motion under § 3582(c)(2). Regardless, *Barnes* addressed sentencing disparities between defendants who were similarly situated with respect to the drug quantities attributable to them. See 602 F.3d at 797. Here, the amount of drugs attributable to Blake and Ivory were not similar because Blake was a supplier to Ivory and at least eight other dealers.

AFFIRMED