

United States Court of Appeals For the First Circuit

No. 25-1443

UNITED STATES,

Appellee,

v.

MALIK D. PARSONS,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M. Gorton, U.S. District Judge]

Before

Aframe, Thompson, and Dunlap,
Circuit Judges.

James L. Sultan, with whom Rankin & Sultan, was on brief, for appellant.

Randall Ernest Kromm, Assistant United States Attorney, with whom Leah B. Foley, United States Attorney, Appellate Division, was on brief, for appellee.

September 11, 2026

DUNLAP, Circuit Judge. A jury convicted Defendant-Appellant Malik Parsons on one count of conspiracy to distribute illegal drugs in violation of 21 U.S.C. § 846 and one count of possession with intent to distribute those drugs in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(ii), and (b)(1)(B)(vi). The district court subsequently sentenced Parsons to eighty-four months' imprisonment. Parsons challenges his convictions and sentence on two grounds. First, he contends that the district court abused its discretion by admitting an improper lay opinion by a law enforcement agent regarding his culpability. Second, he contends that the district court clearly erred by (1) applying a two-level upward adjustment to his offense level for possession of a dangerous weapon under U.S.S.G. § 2D1.1(b)(1), and (2) declining to apply a two-level zero-point-offender downward adjustment to his offense level under U.S.S.G. § 4C1.1(a). We reject each challenge and affirm Parsons's convictions and sentence.

I.

On November 30, 2021, a grand jury indicted Parsons and his co-defendant, Malik Bean-Bousseau, on various charges related to a drug-trafficking conspiracy. Those charges included: (1) conspiracy to distribute (and possess with intent to distribute) forty grams or more of fentanyl and five hundred grams or more of cocaine in violation of 21 U.S.C. § 846 (Count One);

(2) possession with intent to distribute the same amounts of drugs in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(ii), and (b)(1)(B)(vi) (Count Two); (3) possession of firearms in furtherance of a drug trafficking offense in violation of 18 U.S.C. § 924(c)(1)(A)(i) (Count Three); and (4) possession of a firearm with an obliterated serial number in violation of 18 U.S.C. § 922(k) (Count Four). Bean-Bousseau pled guilty to Counts One, Two, and Four and received a sentence of seventy-months imprisonment. Parsons, on the other hand, proceeded to trial on Counts One and Two.¹

At Parsons's trial, the government presented its case through several law enforcement witnesses and exhibits, including video surveillance, photographs, and evidence seized during an August 2, 2021, search of Apartment A-311 (the "Apartment") -- a unit in a multi-unit complex in Mansfield, Massachusetts -- as well as drugs seized from Bean-Bousseau while he was leaving the Apartment that day. We recount the relevant evidence below.

The government's principal witness was Detective Supervisor Anthony Lattanzio of the Mansfield Police Department. He testified about his experience with drug investigations, including his involvement in "hundreds of drug arrests" and

¹ The government dismissed Counts Three and Four as to Parsons prior to trial.

familiarity with the appearance, packaging, and distribution of drugs like fentanyl and cocaine. Based on his experience, he testified that a "stash house" refers to the "location that's primarily used to hide drugs and package drugs and has a primary distribution location." Detective Lattanzio further testified that, in March 2021, he began surveilling the Apartment. During that surveillance, he saw Bean-Bousseau and Parsons at the Apartment "[o]n a near daily basis" and noted that each "had keys to the [A]partment," although neither was listed on the lease for it. Detective Lattanzio never observed the individual who had signed the lease at the Apartment during his investigation. Detective Lattanzio also obtained a warrant to install two cameras on the premises -- one on the building exterior, and the other in the interior hallway facing the Apartment -- which operated between May 26 and August 2, 2021. Video from those cameras showed that Bean-Bousseau and Parsons accessed the Apartment almost daily; that Parsons spent the night at the Apartment about once a week; that Parsons visited the Apartment sometimes by himself and other times with Bean-Bousseau; and that Bean-Bousseau would "rare[ly]" bring guests to the Apartment, but no guests visited the Apartment when neither Bean-Bousseau nor Parsons were present.

Of note, video surveillance showed Parsons arriving at the Apartment on May 31 and exiting the next day with a clear plastic bag that appeared to be knotted at the top and contain a

white substance, which Detective Lattanzio explained "is consistent with packaging narcotics." Moreover, on June 4, Parsons exited the Apartment while counting multiple clear plastic bags each containing a white substance. At various times, Detective Lattanzio also observed Parsons brushing himself off after leaving the Apartment and putting on clothes in the hallway or parking lot, which Lattanzio testified is consistent with "clean[ing] himself off" after "packaging powdery substances such as cocaine and fentanyl." Detective Lattanzio last observed Parsons visiting the Apartment for approximately twenty minutes on July 31, two days before law enforcement searched the Apartment; Parsons changed his clothes while there. Photos taken by law enforcement at the time of their August 2 search depicted clothes hanging in a bedroom closet, along with a few items on the shelf and a bag on the floor.

In addition to his surveillance of the Apartment, Detective Lattanzio testified regarding other evidence obtained during the investigation. That included (1) a pre-paid cellphone recovered from a trash pull at the apartment complex that was originally obtained by Bean-Bousseau and Parsons at Target -- a "burner" phone that Detective Lattanzio explained is commonly "used by drug dealers to avoid detection by law enforcement"; (2) GPS tracking data of Parsons's car showing "numerous pull-offs and stops that were conducted for short periods of time," including

several stops in parking lots at apartment complexes; (3) surveilled car trips in which Detective Lattanzio observed Bean-Bousseau and Parsons conduct numerous "hand-to-hand transactions" after leaving the Apartment; (4) a trash bag thrown away by Parsons at the apartment complex that contained parts of plastic bags with white residue, which tested positive for fentanyl;² (5) items seized during the August 2 search of the Apartment that Detective Lattanzio identified as "used in the production of narcotics," including measuring cups, parts of a blender, a sifter, Pyrex bowls, pots, two scales, and lactose; (6) approximately 697 grams of cocaine in a box under the kitchen sink and approximately 273 grams of cocaine in a bag in a bedroom closet of the Apartment; and (7) a knife, \$2,820 in cash, and multiple bags of drugs -- containing approximately 126 grams of fentanyl and thirteen grams of cocaine base -- found on Bean-Bousseau's person after he left the Apartment on August 2.³

Towards the close of his direct examination, over defense counsel's objection, Detective Lattanzio provided the following testimony concerning Parsons's use of the Apartment:

² One of the government's forensic chemists, Adriana DiLalla, analyzed the residue on the bags recovered from that trash pull and testified that the residue contained fentanyl.

³ The government's other forensic chemist, Christopher Benitendo, analyzed the substances found during the August 2 search, both in the Apartment and on Bean-Bousseau's person, and testified that they contained fentanyl and cocaine.

Q: Based on what we saw during this trial and everything we've learned, how do you believe the apartment was being used?

A: I believe it was being used as a stash house to package and distribute illegal narcotics.

Q: Who was using that stash house?

MS. HACKETT [defense counsel]: Objection.

THE COURT: Overruled.

A: Malik Bean and Malik Parsons.

On January 24, 2025, a jury convicted Parsons of both Counts One and Two. The district court sentenced Parsons to eighty-four months' imprisonment, to be followed by four years of supervised release. This appeal followed.

II.

On appeal, Parsons challenges both his convictions and his sentence. As for his convictions, Parsons argues that the district court abused its discretion by permitting Detective Lattanzio to testify that he believed Parsons used the Apartment as a stash house. As for his sentence, Parsons argues that the district court clearly erred both by applying a two-level upward adjustment to his offense level for possession of a dangerous weapon and by declining to apply a two-level zero-point-offender downward adjustment to his offense level. For the reasons below, each challenge fails.

A. Admission of Testimony

Parsons first argues that the district court abused its discretion by admitting Detective Lattanzio's testimony that Bean-Bousseau and Parsons were "using" the Apartment as a "stash house" to package and distribute drugs. Parsons contends that the testimony was an improper lay opinion by a law enforcement agent that the evidence supported a guilty verdict. He specifically gives four reasons why: (1) the government elicited Detective Lattanzio's statements; (2) the government asked Detective Lattanzio to base his answer on "everything [they've] learned"; (3) the testimony supported the government's theory while cutting against Parsons's; and (4) the testimony constituted an expression of opinion based on the totality of evidence.

We review the district court's admission of lay opinion testimony under Federal Rule of Evidence 701 for abuse of discretion. United States v. Pontz, 132 F.4th 10, 19 (1st Cir. 2025); see Fed. R. Evid. 701. But even if the district court abused its discretion, we apply a harmless error standard to determine if a non-constitutional evidentiary error -- like improperly admitting lay opinion testimony -- warrants judicial relief. See United States v. Sanabria, 645 F.3d 505, 516 (1st Cir. 2011). Such an error is harmless where "it is 'highly probable that [it] did not influence the verdict.'" Id. (quoting United States v. Meises, 645 F.3d 5, 23 (1st Cir. 2011)). "The

government bears the burden to establish harmlessness, and the inquiry requires a case-specific examination of factors that include 'the centrality of the tainted material,' its prejudicial impact, and any other indications that 'the error affected the factfinder's resolution of a material issue.'" Meises, 645 F.3d at 24 (quoting United States v. Flores-De-Jesús, 569 F.3d 8, 27 (1st Cir. 2009)). "For criminal cases, the strength or weakness of the government's evidence of guilt is normally the most important integer in the harmlessness equation." United States v. Kilmartin, 944 F.3d 315, 338 (1st Cir. 2019). We "may find an error harmless when the properly admitted evidence, in and of itself, furnished overwhelming proof of the defendant's guilt." Id.; see United States v. Rodriguez, 525 F.3d 85, 97 (1st Cir. 2008) (holding that admission of hearsay testimony from law enforcement agent was harmless error when "ample evidence was subsequently offered" to support drug-conspiracy conviction).

The government concedes that Detective Lattanzio's testimony "raises concerns" under our precedent because it identifies Parsons as a user of the apartment that functioned as a "stash house," effectively offering the conclusion that Parsons distributed illegal drugs. "Testimony by a law enforcement agent constitutes impermissible overview testimony when it effectively opines that a defendant is guilty based on the totality of information gathered in the agent's investigation." United States

v. Agramonte-Quezada, 30 F.4th 1, 19 (1st Cir. 2022) (quoting United States v. García-Sierra, 994 F.3d 17, 26 (1st Cir. 2021)) (internal quotation marks omitted); see United States v. Pérez-Vásquez, 6 F.4th 180, 199 (1st Cir. 2021) ("In describing his investigation, an officer may not make 'conclusory statements about the defendant's culpability.'" (quoting United States v. Rodríguez-Adorno, 695 F.3d 32, 38 (1st Cir. 2012))). While there appear to be sound reasons for the government's concession, we need not definitively resolve that issue here because any error in admitting Detective Lattanzio's challenged testimony was harmless.

An extensive array of unobjected-to testimony and evidence supported Parsons's convictions. For instance, video surveillance of the Apartment, GPS data and physical surveillance of Parsons's activities outside the Apartment, and drugs and drug paraphernalia recovered from the Apartment all supported the conclusion that the Apartment was a stash house. Surveillance also revealed that Parsons was a "user" of the stash house: he had a key for the Apartment; he visited the Apartment almost daily -- including without Bean-Bousseau -- and stayed overnight weekly; he carried substances appearing to be drugs outside of the Apartment; he disposed of items containing drug residue in the apartment complex's trash facility; and he executed hand-to-hand transactions after leaving the Apartment. All this "evidence,

standing alone, supplied overwhelming proof" of Parsons's participation in the drug conspiracy. Kilmartin, 944 F.3d at 339.

Parsons counters that because Detective Lattanzio's testimony comprised eighty percent of the testimony presented by the government, it "had no case" without him. Parsons does not, however, challenge the majority of Detective Lattanzio's testimony, including his testimony concerning the methods used for packaging and distributing drugs, such as "[h]and-to-hand transactions"; the role of "stash houses" to serve as facilities for "hid[ing] drugs and packag[ing] drugs" and "primary distribution location[s]"; his observations of Parsons leaving the apartment holding bags containing a white substance that appeared to be drugs and executing hand-to-hand transactions with customers; and the drugs and drug paraphernalia recovered from the Apartment, where Parsons regularly visited and stayed overnight. All this testimony -- to which Parsons did not object at trial -- supports his drug-possession and conspiracy convictions.

Because Detective Lattanzio's testimony concerning the use of the Apartment was thus "only one small piece" of the evidence supporting Parsons's convictions, "[t]he jury plainly would have drawn the same conclusion without" it.⁴ United States

⁴ Although Parsons concedes that "the government's other evidence against [him] was substantial," he insists that "it was far from overwhelming." He points to the fact that he visited the Apartment only once in the two weeks before it was searched by

v. Balthazard, 360 F.3d 309, 319 (1st Cir. 2004). Accordingly, even if the district court abused its discretion by admitting the challenged testimony -- a question that we do not need to decide today -- any error was harmless because "it is 'highly probable that [it] did not influence the verdict.'"⁵ Sanabria, 645 F.3d at 516 (internal quotation omitted).

law enforcement; that at the time of the search, only Bean-Bousseau was present at the Apartment and there were no drugs in plain view; and that none of the packages of drugs seized by law enforcement were tested for fingerprints. In our view, these facts do not disturb the "ample evidence" supporting Parsons' convictions. United States v. Rodriguez, 525 F.3d 85, 97 (1st Cir. 2008).

⁵ Parsons primarily relies on two cases to support his proposition that the admission of the testimony was not harmless: United States v. Meises, 645 F.3d 5 (1st Cir. 2011), and United States v. Vazquez-Rivera, 665 F.3d 351 (1st Cir. 2011). But these cases are readily distinguishable. First, Meises and Vazquez-Rivera both involved multiple inadmissible statements, and the combined effects of these statements had to be considered. Here, we only have the statement by Detective Lattanzio -- that they were using the apartment as a "stash house" -- mentioned above. Second, a central component to the court's decision in Meises was that "the contested statements were not 'cumulative of other compelling proof'" of the defendants' guilt. 645 F.3d at 25 (quoting United States v. Earle, 488 F.3d 537, 546 (1st Cir. 2007)). Rather, the inadmissible statements were "central to the prosecution's case." Id. Here, Detective Lattanzio's statement is cumulative of other compelling proof. Outside of his statement, the government elicited a breadth of testimony from Detective Lattanzio on how his team conducted the investigation, as well as from other officers detailing the more than 270 grams of cocaine base and supplies consistent with packaging drugs for distribution recovered from the Apartment. All of which the jury could use to determine, beyond a reasonable doubt, that Parsons used the apartment as a drug stash house.

B. Offense Level Calculation

Parsons separately contests his sentence, challenging the district court's calculation of his offense level under the Sentencing Guidelines. As recounted in Parsons's Presentence Report (PSR) and the parties' sentencing memoranda, the search of the Apartment additionally yielded two firearms -- one in a sweatshirt hanging in the bedroom closet and the other in a shoebox in that closet. Over the objections of defense counsel, the district court adopted the PSR's recommendations to (1) apply a two-level sentencing enhancement to Parson's offense level under U.S.S.G. § 2D1.1(b)(1) based on the finding that firearms were possessed in connection with the drug trafficking, and (2) deny a two-level reduction to his offense level available to certain zero-point offenders under U.S.S.G. § 3B1.2 based on the same finding. Parsons challenges each application of the guidelines.

Claims, as here, that the district court erred in applying the guidelines are procedural in nature. See United States v. Guía-Sendeme, 134 F.4th 611, 616 (1st Cir. 2025). We review preserved procedural-reasonableness claims under a "multifaceted abuse-of-discretion standard." Id. (quoting United States v. Mendoza-Maisonet, 962 F.3d 1, 20 (1st Cir. 2020)). "Under that standard, we review the sentencing court's interpretation and application of the Sentencing Guidelines de novo, its factfinding for clear error, and its exercise of judgment

for abuse of discretion." Id. We uphold the district court's application of the guidelines to Parsons.

1. Possession-of-Dangerous-Weapon Enhancement

Parsons first argues that the district court erred by applying a two-level enhancement to his offense level under U.S.S.G. § 2D1.1(b)(1). That provision allows for such an enhancement "[i]f a dangerous weapon (including a firearm) was possessed" during the course of a drug-trafficking offense. U.S.S.G. § 2D1.1(b)(1); United States v. Nuñez, 840 F.3d 1, 5 (1st Cir. 2016). "The government has the initial burden of establishing" by a preponderance of the evidence "that the defendant possessed a weapon during the commission of the offense." Nuñez, 840 F.3d at 5; see United States v. Elliott, 113 F.4th 168, 173 (1st Cir. 2024).⁶

⁶ If the government meets its burden to establish possession, "the enhancement attaches unless the defendant can show that it was clearly improbable that the weapon was connected to the crime." United States v. Nuñez, 840 F.3d 1, 5 (1st Cir. 2016); see U.S.S.G. § 2D1.1, cmt. n.11.

Parsons suggests that the district court improperly considered this application note when determining whether possession of firearms by his co-defendant was reasonably foreseeable to him -- a finding that is an alternative to a finding of constructive possession by Parsons that would also support application of the firearms enhancement. See United States v. Guía-Sendeme, 134 F.4th 611, 626 (1st Cir. 2025). The record shows, however, that the district court merely referenced the application note in a question to the parties, not that it relied on the note for that part of its analysis. In any event, we hold that the record supports a finding of constructive possession, and need not rely on any finding of reasonable foreseeability.

The government may show such possession "by showing that the defendant had 'constructive possession' of the weapon." United States v. Sylvestre, 78 F.4th 28, 36 (1st Cir. 2023) (quoting United States v. Davis, 909 F.3d 9, 18 (1st Cir. 2018)). "Constructive possession is present 'when a person knowingly has the power at a particular time to exercise dominion and control over' an object," and "may be proven by circumstantial evidence." Id. (quoting United States v. Nuñez, 852 F.3d 141, 145 (1st Cir. 2017)). "Both 'actual knowledge' and 'intent to control' 'may be proven by circumstantial evidence.'" Id. (quoting Davis, 909 F.3d at 18). "'[E]vidence of an individual's control over the area where the contraband is found' is 'valid circumstantial evidence of constructive possession.'" Id. (quoting Davis, 909 F.3d at 19). "[M]ere presence with or proximity to weapons or association with another who possesses a weapon," on the other hand, "are not enough to prove constructive possession." United States v. Rodriguez-Lozada, 558 F.3d 29, 40 (1st Cir. 2009). Moreover, "[c]onstructive possession may be sole or joint and may be achieved

Parsons separately requests that we "reconsider" the application note's legal effect altogether, because "some circuits have declined to rely on U.S.S.G. commentary as authoritative" following the Supreme Court's holding in Kisor v. Wilkie, 588 U.S. 558 (2019). But because Parsons has not developed this argument, we deem it waived. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

directly or through others." United States v. Akinola, 985 F.2d 1105, 1109 (1st Cir. 1993).

Here, the evidence supports a finding by a preponderance of the evidence that Parsons constructively possessed the firearms recovered from the Apartment in connection with his drug-trafficking offenses. Specifically, Detective Lattanzio's testimony established, based on several months of surveillance during the course of the drug-trafficking activity, that Parsons had keys to the Apartment; that Parsons visited the Apartment on a "near daily" basis, both with Bean-Bousseau and on his own; that Parsons stayed overnight at the Apartment approximately weekly; that the renter listed on the lease was never observed at the Apartment; that at least one of Parsons and Bean-Bousseau always accompanied guests into the Apartment; and that two days before law enforcement searched the Apartment, Parsons was inside for approximately twenty minutes and changed his clothes before he left.

All this evidence supports a finding that Parsons exercised control over the Apartment and, specifically, the bedroom, given that he regularly spent the night at the Apartment -- presumably sleeping in the bedroom -- and also changed there -- presumably using the closet, where clothes were hanging. Moreover, the contents of the closet were sparse, supporting an inference that Parsons was aware of the limited

contents inside, including the two firearms, during his regular overnight stays over the course of months.

Parsons's control over the bedroom and its closet, in turn, supports that he "knowingly ha[d] the power . . . to exercise dominion and control over" the firearms inside it. Sylvestre, 78 F.4th at 36; see Mendoza-Maisonet, 962 F.3d at 13 (affirming finding that defendant had constructive possession of a backpack found inside the closet of a bedroom where he slept and kept some personal belongings, even though his friend owned the house); United States v. Robinson, 473 F.3d 387, 399 (1st Cir. 2007) (affirming finding that defendant had constructive possession of firearms stored inside a car where the evidence showed, in part, that he was friends with the car's owner and had access to the keys and opportunity to drive the car).

The extensive evidence of Parsons's personal involvement in drug distribution from the Apartment, discussed above, further supports a finding that he constructively possessed the firearms during the course of his drug trafficking activity. That is because Parsons's connection to the drug business and use of the Apartment as a stash-house "provides a compelling motive for possessing the gun, namely, to protect his drugs and drug money." United States v. Smith, 292 F.3d 90, 99 (1st Cir. 2002); see United States v. McLean, 409 F.3d 492, 504 (1st Cir. 2005) (explaining that the "intention to exert dominion and control over [a] firearm"

could be inferred based on the nature of drug transactions because the defendant "could well have intended to use the gun for protection in the event of trouble with one of [his] crack sales"). Here, law enforcement found more than one-half kilogram of drugs during their search of the Apartment, which supports a motive for Parsons to use the firearms for protection, especially given that third parties -- who could attempt to seize the drugs or otherwise put the operation in jeopardy -- visited the Apartment.

Because the record supports a finding of constructive possession by a preponderance of the evidence, the district court did not err in applying a two-level enhancement to Parson's offensive level under U.S.S.G. § 2D1.1(b)(1).⁷

2. Zero-Point-Offender Reduction

Parsons next argues that the district court erred by declining to apply the zero-point-offender reduction under U.S.S.G. § 4C1.1(a). That provision, appended to the guidelines in November 2023, provides for a downward adjustment of two offense levels for a defendant who has zero criminal history points and satisfies other criteria, including -- relevant here -- that he

⁷ For completeness, we note that the district court appeared, at times, to apply this enhancement based on a finding of reasonable foreseeability. Other times, however, the district court found that Parsons constructively possessed the firearm, a finding which would also support the application of this enhancement. As our analysis makes clear, we rely on this latter determination in affirming the district court's application of the sentencing enhancement.

"did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense." U.S.S.G. § 4C1.1(a)(7). Despite noting "a paucity of reported case law interpreting or applying this recent provision," Parsons contends that the district court improperly conflated the analysis under the sentence reduction with that for the firearm-possession enhancement under U.S.S.G. § 2D1.1(b)(1), relying on the same finding of foreseeability in determining that he "possessed" a firearm. Parsons insists that the district court should have instead construed § 4C1.1(a)(7) in line with precedent construing the identically worded safety-valve provision, § 5C1.2(a)(2), such that it would apply so long as he did not personally possess the firearms at issue. As we explain above, however, the record supports a finding by a preponderance of the evidence that Parsons did have constructive possession of the firearms; even under Parsons's proposed construction, then, § 4C1.1(a)(7) still would not apply to him. Accordingly, the district court did not err in declining to reduce his offense level on that basis.⁸

⁸ As mentioned above, the district court appeared, at times, to rely on a finding of foreseeability in applying the enhancement under U.S.S.G. § 2D1.1(b)(1). But again, as we also mentioned above, the court separately found that Parsons constructively

III.

For these reasons, we affirm Parsons's convictions and sentence.

possessed the firearm. And as our analysis makes clear, we rely on that determination in resolving this issue.