

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-11532

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TORRI MCLAURIN,

a.k.a. T-Dub,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cr-00168-KKM-NHA-4

Before ROSENBAUM, BRANCH, and TJOFLAT, Circuit Judges.

BRANCH, Circuit Judge:

Torri McLaurin pleaded guilty to one count of conspiracy to distribute and possess with intent to distribute methamphetamine, fentanyl, and cocaine and one substantive count of possession with

intent to distribute those same drugs. McLaurin was sentenced to 235 months' imprisonment after the district court calculated his sentencing guidelines offense level based on the weight of drugs he and his co-conspirators possessed. The district court also applied a two-level guidelines enhancement under U.S.S.G. § 2D1.1(b)(12) for maintaining premises for the purpose of manufacturing or distributing a controlled substance.

McLaurin now appeals, arguing that he should not be held accountable for the weight of the drugs possessed by his co-conspirators because the government did not prove that his co-conspirators' actions were "relevant conduct" within the meaning of the sentencing guidelines. He also argues that his actions do not support the § 2D1.1(b)(12) enhancement and the sentencing guidelines do not allow courts to apply that enhancement based on co-conspirator conduct.

After careful review and with the benefit of oral argument, we affirm. First, we explain why the district court did not clearly err in attributing to McLaurin the weight of drugs possessed by his co-conspirators. Then, after holding that sentencing courts can apply the § 2D1.1(b)(12) enhancement based on co-conspirators' conduct, we determine that the district court did not err in relying on McLaurin's co-conspirators' actions to apply the enhancement because their conduct was reasonably foreseeable to McLaurin.

I. Background

McLaurin was indicted, along with three others, for conspiracy to distribute and possess with intent to distribute 500

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grams or more of methamphetamine, 40 grams or more of fentanyl, and cocaine (“Count One”). McLaurin was also charged with possessing with intent to distribute 5 grams of methamphetamine, 40 grams of fentanyl, and cocaine (“Count Six”).

McLaurin pleaded guilty to Counts One and Six without the benefit of a plea agreement. The government’s factual proffer at McLaurin’s change-of-plea hearing included the following facts. McLaurin was a member of a group called Big Tawk Entertainment (“BTE”) that conspired to deal more than 500 grams of methamphetamine, 40 grams or more of fentanyl, and a detectable amount of cocaine. In January 2022, law enforcement executed a search warrant at a house on 50th Avenue in St. Petersburg, Florida, after making several controlled drug purchases from BTE members at that residence, including one controlled purchase from McLaurin on the day the warrant was executed. Agents recovered methamphetamine, fentanyl, and cocaine from the residence. Law enforcement executed three more search warrants at different locations connected to BTE, finding more methamphetamine, fentanyl, cocaine, and two firearms. The government asserted that “[a]ll controlled substances seized were part of the conspiracy by BTE that includes Mr. McLaurin to distribute controlled substances.”

McLaurin objected to the government’s statement that all the controlled substances law enforcement seized were attributable to him because he did not want to “box him[self] in on

a relevant conduct issue,” but he stipulated to being a part of the BTE conspiracy, distributing controlled substances, and that the weight of each controlled substance for which he was responsible met the weight required to satisfy the counts to which he was pleading guilty. The district court accepted McLaurin’s guilty plea.

A probation officer then prepared a presentence investigation report (“PSI”) that detailed McLaurin’s offense conduct and his role in the BTE conspiracy. According to the PSI, BTE filmed music videos at three residences in St. Petersburg—one on 13th Avenue, one on 29th Street, and the aforementioned 50th Avenue residence—and posted those videos on social media. One music video depicted members of the group, including McLaurin, at the 50th Avenue residence along with descriptions and images of drug manufacturing, including the words “trap rules” on a board in the background of the video.¹ Another music video showed BTE members, not including McLaurin, at the 29th Street residence singing about drug manufacturing and simulating cooking crack cocaine while displaying suspected methamphetamine and featuring the term “Trap Gods” on the screen. The PSI stated that McLaurin conspired with other members of BTE to distribute methamphetamine, fentanyl, and cocaine from the 13th Avenue, 29th Street, and 50th Avenue residences.

Next, the PSI provided information about the drug seizures relevant to McLaurin’s case. On January 23, 2022, sheriff’s deputies

¹ BTE members referred to the residences where they packaged and distributed drugs as “trap houses.”

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stopped and searched a car in which a BTE member was a passenger, finding methamphetamine, marijuana, more than \$1,800 in cash, two phones, and cut-up plastic baggies.

Then, on January 27, 2022, agents used a confidential source to make a controlled drug purchase from McLaurin while he was at the 50th Avenue residence. Immediately after the drug purchase, agents executed a search warrant at that location, recovering methamphetamine, fentanyl, and cocaine. Officers searched a vehicle parked outside the residence, which McLaurin identified as his mother's, and found the buy money used in the controlled purchase. McLaurin was arrested that day.

On April 5, 2022, agents executed a search warrant at the 29th Street residence and recovered methamphetamine, fentanyl, cocaine, and two guns. Agents executed a second search warrant at the 29th Street residence on October 10, 2022, and again recovered methamphetamine, fentanyl, and cocaine.

On April 18, 2023, agents executed a search warrant at the 16th Avenue residence and recovered methamphetamine and cocaine.

The PSI concluded that “McLaurin is responsible for the drug quantities located during the time period of the investigation of the BTE members including narcotics located during the traffic stop . . . and in the four executed search warrants at the residences controlled by BTE.”

Pursuant to U.S.S.G. § 2D1.1(c)(3), the PSI calculated McLaurin's base offense level to be 34, based on the total weight of

the drugs seized from the vehicle stop, the 13th Avenue residence, the 29th Street residence, and the 50th Avenue residence. The PSI added a two-level increase under § 2D1.1(b)(1) for possession of a dangerous weapon and another two-level enhancement under § 2D1.1(b)(12) for maintaining premises for the purpose of manufacturing or distributing a controlled substance.

McLaurin objected to his base offense level, arguing that he should only be responsible for the drugs recovered from the 50th Avenue residence. He also objected to the two-level § 2D1.1(b)(12) enhancement, arguing that the enhancement should not apply to him because he held no possessory interest in the 50th Avenue residence and did not control access to or activities at the house.

At his sentencing hearing, McLaurin reiterated his argument that he should be held accountable only for the drugs found at the 50th Avenue residence because that was the only location to which he had ties. McLaurin admitted to selling drugs to a confidential informant at the 50th Avenue residence right before it was raided, being at the 50th Avenue residence when agents raided it, and participating in the music video filmed at the 50th Avenue residence, but he denied that he was linked to any drug sales at any other location. The court then noted that there were no factual objections to the PSI's description of the offense conduct, which stated that McLaurin conspired with other BTE members "to distribute the three narcotics from the three . . . locations. So not just the 50th Avenue location." McLaurin responded that he "d[id not] have a dispute" to the court's statement and did not have a

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further response. The court overruled McLaurin's objection to his base offense level and, based on the unchallenged statements in the PSI and the facts agreed to at the change-of-plea hearing, found McLaurin responsible for the full weight of drugs agents seized. The court found it "beyond reasonably foreseeable" to McLaurin that his co-conspirators would sell drugs from other locations when he was not physically present and observed that McLaurin participated in a music video to promote the sale of the drugs.

McLaurin next argued that the two-level § 2D1.1(b)(12) maintaining premises enhancement should not apply to him. Without disputing that the conspiracy involved premises used for manufacturing or distributing a controlled substance, McLaurin noted that the 50th Avenue residence was "jointly held," that he did not have a possessory interest in it, and that he did not have keys to it; even though he, like a lot of other people, was "there a lot." He also argued that he did not control activities at the 50th Avenue residence even though he did sell drugs from there and received a commission on his sales; according to McLaurin, he was a "low man" in the conspiracy who answered to other people and sold the drugs for the price he was told to sell them for. The government responded that it did not need to show that McLaurin personally maintained the premises because maintaining multiple houses for drug manufacture and distribution was a reasonably foreseeable part of the conspiracy.

The court overruled McLaurin's objection and found that McLaurin controlled access to and activities at the 50th Avenue

location, even if that control was not exclusive. The court also found it reasonably foreseeable that McLaurin's co-conspirators maintained each of the premises for manufacturing or distributing controlled substances, especially given that BTE filmed music videos from the residences to market their drug distribution.

After overruling McLaurin's objections, the court determined that the appropriate guidelines sentencing range was 262 to 327 months' imprisonment. The court ultimately sentenced McLaurin to a below-guidelines sentence of 235 months' imprisonment. McLaurin appealed.

II. Standard of Review

We review a district court's interpretation of the sentencing guidelines *de novo* and its factual findings for clear error. *United States v. George*, 872 F.3d 1197, 1204 n.6 (11th Cir. 2017). The quantity of drugs attributable to a defendant and whether a defendant maintained premises for the manufacture or distribution of drugs are findings of fact. *See United States v. Rodriguez*, 34 F.4th 961, 968 (11th Cir. 2022) (drug quantity); *George*, 872 F.3d at 1205 (maintained premises). "[W]e will reverse for clear error only when we are 'left with a definite and firm conviction that a mistake has been committed.'" *Rodriguez*, 34 F.4th at 968–69 (quoting *United States v. Almedina*, 686 F.3d 1312, 1315 (11th Cir. 2012)).

III. Discussion

"[T]he district court must impose a procedurally and substantively reasonable sentence." *United States v. Gonzalez*, 550 F.3d 1319, 1323 (11th Cir. 2008) (per curiam). "To be procedurally

reasonable, a defendant's guidelines range, including the application of any enhancements, must have been correctly calculated." *United States v. Isaac*, 987 F.3d 980, 990 (11th Cir. 2021). On appeal, McLaurin argues that the district court erred by miscalculating his guidelines range in two ways: by holding him responsible for the total drug weight of the conspiracy and by applying the § 2D1.1(b)(12) enhancement for maintaining premises for the purpose of manufacturing or distributing a controlled substance. We first address the drug weight attributable to McLaurin before turning to the § 2D1.1(b)(12) enhancement.

A. *McLaurin is responsible for the drugs his co-conspirators possessed*

McLaurin argues that his co-conspirators' conduct was not relevant conduct for purposes of his sentence because he only dealt drugs from the 50th Avenue residence, there was no evidence he was ever present at any other drug location, and he did not go back to the 50th Avenue location after his January 2022 arrest, so his co-conspirators' actions after that date were not reasonably foreseeable. The government responds that the district court did not clearly err because McLaurin did not object to the PSI's paragraph holding him accountable for specific quantities of drugs seized during the traffic stop and from residences controlled by BTE.

Under the sentencing guidelines, an enhancement can be applied only based on a defendant's relevant conduct. *See* U.S.S.G. § 1B1.3. Relevant conduct includes the defendant's own actions

and “all acts and omissions of others” that were “(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity.” *Id.* § 1B1.3(a)(1).

A defendant’s “mere awareness” that he was part of a larger scheme is insufficient to show that a co-conspirator’s activity was within the scope of the defendant’s jointly undertaken criminal activity, *United States v. Presendieu*, 880 F.3d 1228, 1246 (11th Cir. 2018), and the fact that a defendant pleaded guilty to a conspiracy does not mean that he should automatically be held responsible for the scope of the entire conspiracy, *United States v. Hunter*, 323 F.3d 1314, 1320 (11th Cir. 2003). But when a defendant “work[s] extensively in partnership with other members of [an] elaborate drug conspiracy, he [is] properly . . . held responsible for his co-conspirators’ actions.” *Rodriguez*, 34 F.4th at 972.

The undisputed statements of fact in the PSI were sufficient for the district court to hold McLaurin accountable for the drug weight his co-conspirators possessed. “A sentencing court’s findings of fact may be based on undisputed statements in the PSI.” *United States v. Bennett*, 472 F.3d 825, 832 (11th Cir. 2006) (per curiam). And “a failure to object to allegations of fact in a PSI admits those facts for sentencing purposes.” *United States v. Wade*, 458 F.3d 1273, 1277 (11th Cir. 2006). Here, the undisputed and unobjected-to facts include the statements that “McLaurin conspired with fellow BTE members to distribute methamphetamine, fentanyl, and cocaine from the three [BTE

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residences]” and that “McLaurin is responsible for the drug quantities located . . . during the traffic stop . . . and in the four executed search warrants at the residences controlled by BTE.”² Accordingly, the district court did not clearly err by holding McLaurin responsible for the drugs his co-conspirators possessed.

McLaurin attempts to overcome the unobjected-to PSI facts by arguing that he was never present at any other drug-related location and that he did not go back to the 50th Avenue residence after his January 2022 arrest. But the fact that McLaurin was not present at any other drug location does not mean drug activity at those locations was not in furtherance of his jointly undertaken criminal activity and reasonably foreseeable to him, which is the relevant inquiry. *See* U.S.S.G. § 1B1.3(a)(1)(B).

Nor does the timing of McLaurin’s arrest show error. A defendant may be responsible for actions of his co-conspirators that occurred after he stopped working for the conspiracy if he does not withdraw from the conspiracy. *Rodriguez*, 34 F.4th at 969. To

² While McLaurin objected to the calculation of his base offense level before his sentencing hearing, he did not object to the PSI’s description of his offense conduct, and he conceded at the sentencing hearing that he had no objection to the relevant facts—the “offense conduct”—in the PSI. At the hearing, the district court pressed McLaurin to respond to the fact that “there’s been no factual objections to the offense conduct, which clearly says that Mr. McLaurin conspired with the BTE members to distribute the three narcotics from the three . . . locations. So not just the 50th Avenue location.” McLaurin “d[id]n’t disagree with [the court’s] assessment of it” and “d[id]n’t have a response” or “a dispute to what [the court] . . . said.”

withdraw from a conspiracy “a defendant must ‘take steps inconsistent with the conspiracy and communicate these acts in a manner reasonably calculated to reach the coconspirators, or disclose the illegal activity to law enforcement authorities.’” *Id.* (alterations adopted) (quoting *United States v. Butler*, 41 F.3d 1435, 1446 (11th Cir. 1995)). “Simply being unavailable” when a search warrant was executed does not show that a defendant withdrew from a conspiracy. *Id.*; see also *United States v. Graham*, 123 F.4th 1197, 1286–87 (11th Cir. 2024) (attributing to the defendant drugs his co-conspirators sold while he was incarcerated). McLaurin does not point to any evidence in the record that indicates that he withdrew from the conspiracy beyond the fact that he may have been unavailable to participate in the conspiracy once he was arrested. Thus, the district court did not err by holding McLaurin accountable for the drugs seized from other residences after his arrest.³ See *Graham*, 123 F.4th at 1286–87.

³ McLaurin’s argument that the district court failed to make the requisite factual finding that his co-conspirators’ actions were in furtherance of jointly undertaken criminal activity lacks merit. The district court made such a finding when it stated that it was “beyond reasonably foreseeable that the group to which [McLaurin] conspired to sell the three drugs might sell them at other locations when [he was] not physically present when that [wa]s the purpose of the conspiracy, which [wa]s to sell these three drugs. The [music] videos were in furtherance of that in terms of promotion of [McLaurin’s] drug sale network This was jointly undertaken criminal activity”

B. The § 2D1.1(b)(12) maintaining premises enhancement applies based on McLaurin's co-conspirators' conduct

McLaurin argues that the district court erred in applying the § 2D1.1(b)(12) enhancement for maintaining premises for the purpose of manufacturing or distributing a controlled substance based on his actions at the 50th Avenue residence. He also argues that the guidelines do not permit the government to rely on the reasonably foreseeable acts of McLaurin's co-conspirators to apply the enhancement and that even if the government can, in some instances, rely on co-conspirators' actions to support the § 2D1.1(b)(12) enhancement, it cannot do so here because McLaurin's co-conspirators' conduct was not reasonably foreseeable. The government contends that the district court did not clearly err by finding that McLaurin's own conduct was sufficient to apply the enhancement and that such a finding was unnecessary because the court was permitted to rely on McLaurin's co-conspirators' conduct.

We do not reach whether McLaurin's own conduct justified the application of the § 2D1.1(b)(12) enhancement because we hold that the § 2D1.1(b)(12) enhancement can be applied based on a co-conspirator's relevant conduct and McLaurin's co-conspirators' actions at the three residences were reasonably foreseeable to him.

Section 2D1.1(b)(12) of the sentencing guidelines provides for a two-level enhancement “[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” U.S.S.G. § 2D1.1(b)(12). We evaluate “the

totality of the circumstances” to determine whether the enhancement applies. *George*, 872 F.3d at 1205. The commentary to the guidelines instructs courts to consider “whether the defendant held a possessory interest in (e.g., owned or rented) the premises and . . . the extent to which the defendant controlled access to, or activities at, the premises.”⁴ U.S.S.G. § 2D1.1(b)(12) cmt. (n.17).

In calculating a defendant’s guidelines range, a sentencing court must consider all relevant conduct in the offense, including, in some cases, the conduct of others acting in concert with the defendant. *United States v. Chavez*, 584 F.3d 1354, 1367–68 (11th Cir. 2009) (citing U.S.S.G. § 1B1.3(a)(1)). As a general rule, courts can apply an enhancement under chapter two of the guidelines based on acts and omissions of other participants in a “jointly undertaken criminal activity,” as long as the others’ conduct was “(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in

⁴ The commentary further provides that

[m]anufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant’s primary or principal uses for the premises In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

U.S.S.G. § 2D1.1(b)(12) cmt. (n.17).

connection with that criminal activity.” U.S.S.G. § 1B1.3(a)(1)(B). But as an exception to this general rule, a sentencing court must not enhance a defendant’s sentence based on the jointly undertaken criminal activity of a defendant’s co-conspirators when a guideline specifies otherwise. *Id.* § 1B1.3(a).

In determining whether the district court properly applied the § 2D1.1(b)(12) enhancement based on McLaurin’s co-conspirators’ conduct, we are guided by our decisions in *United States v. Cook*, 181 F.3d 1232 (11th Cir. 1999), and *United States v. McClain*, 252 F.3d 1279 (11th Cir. 2001). In *Cook*, we considered whether a sentencing court could enhance the sentences of two co-defendants pursuant to U.S.S.G. § 3C1.2 based the conduct of other members of the conspiracy. *See Cook*, 181 F.3d at 1233–34. Section 3C1.2 instructed sentencing courts to apply a two-level enhancement “[i]f the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer.” *Id.* at 1233 (alteration in original) (quoting U.S.S.G. § 3C1.2). The commentary to § 3C1.2 stated that “[u]nder this section, the defendant is accountable for [his] own conduct and for conduct that [he] aided or abetted, counseled, commanded, induced, procured, or willfully caused.” *Id.* at 1233–34 (alterations in original) (quoting U.S.S.G. § 3C1.2 cmt. (n.5)). We concluded that “[b]y limiting the responsibility for another’s actions to those instances when the defendant ‘aided or abetted, counseled, commanded, induced, procured, or willfully caused’ [another] person’s conduct, [the commentary] establishes an exception to the

general rule in § 1B1.3(a)(1)(B).” *Id.* at 1235 (quoting U.S.S.G. § 3C1.2 cmt. (n.5)). We thus held that sentencing courts could not consider the conduct of others acting in concert with the defendant to determine whether § 3C1.2’s enhancement applied. *Id.* at 1235–36.

In *McClain*, we considered whether U.S.S.G. § 3B1.4’s enhancement could be imposed based on the jointly undertaken criminal activity of a defendant’s co-conspirators. *McClain*, 252 F.3d at 1287. Section 3B1.4 provides for a two-level enhancement “[i]f the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense.” *Id.* at 1285 (alteration in original) (quoting U.S.S.G. § 3B1.4). The defendant argued that the enhancement could not be applied based on co-conspirators’ conduct because such a construction would render the enhancement applicable on a strict-liability basis. *See id.* at 1287. We held, however, that § 3B1.4’s enhancement could properly be imposed based on the jointly undertaken criminal activity of co-conspirators. *Id.* at 1288. We reasoned that the “strict-liability” fear was unfounded because § 1B1.3(a)(1)(B) allows co-conspirators’ conduct to serve as the basis for imposing the enhancement only when the co-conspirators’ conduct was reasonably foreseeable. *Id.* at 1287–88.

Turning to the guidelines provision at issue, similar to the one at issue in *McClain*, nothing in § 2D1.1(b)(12) prohibits a sentencing court from imposing the premises enhancement based

on the jointly undertaken criminal activity of co-conspirators. Section 2D1.1(b)(12) differs from the guidelines provision at issue in *Cook* because § 2D1.1(b)(12) lacks commentary limiting the effect of § 1B1.3(a)(1)(B).⁵

McLaurin resists this conclusion, arguing that § 2D1.1(b)(12) cannot be imposed based on the jointly undertaken criminal activity of a co-conspirator because § 2D1.1(b)(12) explicitly applies “[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance.” U.S.S.G. § 2D1.1(b)(12) (emphasis added). But *McClain* implicitly rejected this argument. Section 3B1.4 also applies “[i]f the defendant” engages in certain conduct, yet the *McClain* court concluded that § 3B1.4 could be applied based on a co-conspirator’s reasonably foreseeable conduct. We therefore hold that the district court did not err in imposing the § 2D1.1(b)(12) enhancement for maintaining premises for the purpose of manufacturing or distributing a controlled substance based on co-conspirator conduct.

⁵ In *United States v. Dupree*, we held that courts “may not defer” to the commentary to the sentencing guidelines “if ‘uncertainty does not exist’” in the guideline itself. 57 F.4th 1269, 1275 (11th Cir. 2023) (en banc) (quoting *Kisor v. Wilkie*, 588 U.S. 558, 574–75 (2019)). However, here, we are not deferring to the commentary to interpret § 2D1.1(b)(12); we are distinguishing the commentary to the two enhancements under consideration to explain why *Cook*, which relied on the commentary to § 3C1.2, does not bind our interpretation in this case.

Having held that the § 2D1.1(b)(12) enhancement can be applied based on co-conspirator conduct, McLaurin's only remaining argument is that his co-conspirators' actions at the BTE-controlled residences were not reasonably foreseeable. We find no error in the district court's conclusion that it was reasonably foreseeable to McLaurin that his co-conspirators would maintain the BTE residences for drug distribution because McLaurin filmed a music video with his co-conspirators at one of the residences to promote their drug distribution, McLaurin himself sold drugs from one of the residences, and the purpose of the conspiracy was to distribute methamphetamine, fentanyl, and cocaine.

IV. Conclusion

For the above reasons, the district court did not err in calculating McLaurin's offense level or guidelines range, so his sentence was procedurally reasonable. Accordingly, we affirm.

AFFIRMED.

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ROSENBAUM, Circuit Judge, concurring in part and dissenting in part:

For the reasons the Majority Opinion explains, I agree with the Majority Opinion's affirmance of the district court's ruling holding Torri McLaurin responsible for the drugs involved in the conspiracy. But I respectfully disagree with the Majority Opinion's ruling that courts may apply U.S.S.G. § 2D1.1(b)(12)'s premises enhancement to a defendant, under U.S.S.G. § 1B1.3(a)(1)(B), based solely on the relevant conduct of his co-conspirators. I also respectfully disagree with the district court's assessment that its factual findings sufficiently support imposition of the premises enhancement based solely on McLaurin's relevant conduct. So I would vacate the district court's application of U.S.S.G. § 2D1.1(b)(12) to McLaurin's offense level and remand for further factual findings to determine whether McLaurin's own conduct makes him eligible for the premises enhancement.

Section 2D1.1(b)(12) of the Sentencing Guidelines provides for a two-level offense-level enhancement "[i]f the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance." U.S.S.G. § 2D1.1(b)(12). As relevant here, the commentary to this guideline directs courts to evaluate "whether the defendant held a possessory interest in (e.g., owned or rented) the premises and . . . the extent to which the defendant controlled access to, or activities at, the premises." U.S.S.G. § 2D1.1(b)(12) cmt. (n.17).

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As the Majority Opinion explains, under the Guidelines, a defendant is responsible for all “relevant conduct.” Section 1B1.3 of the Guidelines, in turn, defines “relevant conduct” to include not only the defendant’s own actions, but also “all acts and omissions of others” that were “(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity.” *Id.* § 1B1.3(a)(1)(B).

I haven’t identified a precedential opinion in our Circuit or in our sister circuits where a court applied the premises enhancement without considering the defendant’s unique relationship to the premises. *See, e.g., United States v. Thomas*, 32 F.4th 1073, 1078 (11th Cir. 2022) (defendant lived in the stash house during a portion of the conspiracy); *United States v. Soto-Villar*, 40 F.4th 27, 35 (1st Cir. 2022) (defendant rented the stash house); *United States v. Garcia*, 774 F.3d 472, 475 (8th Cir. 2014) (defendant handled chores at the stash house, including mowing the lawn and taking out the trash).

And that makes sense. After all, by its terms, the commentary to the premises enhancement explicitly directs courts to consider and account for the defendant’s special and unique relationship to the stash house. *See* U.S.S.G. § 2D1.1(b)(12) cmt. (n.17).

The Majority Opinion relies on *McClain* to reach the opposite conclusion. *See* Maj. Op. at 16–18 (citing *United States v.*

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McClain, 252 F.3d 1279, 1287–89 (11th Cir. 2001)). I’m not convinced.

McClain concerned the sentencing of two defendants who were convicted of conspiring to commit bank fraud. 252 F.3d at 1279. As part of their scheme, they recruited young women to cash counterfeit checks at various banks. *Id.* A defendant in *McClain* objected that he wasn’t aware that one of the recruits was a minor, so the sentencing enhancement for involving a minor should not apply to him. *See id.* at 1284.

The sentencing enhancement at issue in *McClain*, U.S.S.G. § 3B1.4, states, “If the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by two levels.” The defendant in *McClain* argued that the default rule of U.S.S.G. § 1B1.3(a)(1)(B) should not apply, because the phrase “*the defendant*” limits the application of § 3B1.4 to the conduct charged against the defendant personally, not conduct charged against co-conspirators. *See McClain*, 252 F.3d at 1287–88. We disagreed. *Id.*

But *McClain* should not guide our analysis here. For two reasons, applying the under-eighteen enhancement because of the relevant conduct of a co-conspirator differs materially from applying the premises enhancement because of the relevant conduct of a co-conspirator.

First, unlike with the under-eighteen enhancement, as I’ve noted, the application note to the premises enhancement

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specifically directs courts to look at the defendant's unique relationship to the premises. See U.S.S.G. § 2D1.1(b)(12) cmt. (n.17). To be sure, both enhancements refer to "the defendant." But the commentary to the premises enhancement instructs courts to consider "(A) whether the defendant held a possessory interest in (e.g., owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises." *Id.* In other words, the commentary to the premises enhancement directs courts to look for touchpoints between the defendant and the stash house when considering whether to apply the enhancement. In contrast, the under-eighteen enhancement in *McClain* contained no specific directive to consider the defendant's personal or unique efforts to recruit a minor.

Second, *McClain's* application of the under-eighteen enhancement based on the conduct of co-conspirators did not risk effectively rewriting the base offense level for bank fraud, the crime for which the *McClain* defendants were convicted. By its nature, bank fraud does not necessarily require people under eighteen to participate. Indeed, *McClain's* crime was somewhat unusual because the conspiracy purposely looked for and used young women to cash its counterfeit checks. Given the nature of the scheme, *McClain* held that it was reasonably foreseeable that one of the young women participating would be a minor. See 252 F.3d at 1288. But bank fraud by its nature does not require minors for success. To the contrary, most federally prosecuted bank-fraud schemes do not employ minors. So *McClain's* determination that the under-eighteen enhancement can apply to a bank-fraud

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defendant as a result of a co-conspirator's reasonably foreseeable relevant conduct did not even arguably effectively make the under-eighteen enhancement applicable to all bank-fraud defendants.

The same is not true of the Majority Opinion's determination that the premises enhancement can apply to a drug-trafficking defendant through his co-conspirator's relevant conduct. Rather, the use of a stash house to manufacture or distribute drugs is reasonably foreseeable most of the time that a drug-trafficking conspiracy exists. Because most drug-trafficking conspiracies employ some form of a stash house, application of the premises enhancement to a defendant based on his co-conspirator's conduct effectively rewrites the premises enhancement into the base offense level for drug trafficking in our Circuit.

If the Sentencing Commission intended for the premises enhancement to apply in every drug-trafficking conspiracy, it would have made that enhancement part of the base offense level. Instead, though, the Sentencing Commission made it a special offense characteristic. An enhancement is hardly a special offense characteristic if it applies in virtually every case.

So most respectfully, I disagree that the premises enhancement may apply to a defendant based on his co-conspirator's relevant conduct. And because I don't think the district court's factual findings here sufficiently support the premises enhancement, I would vacate the sentence and remand to the district court to make further factual findings on the nature of McLaurin's relationship to the premises, including whether he

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routinely engaged in upkeep of the house, stored property at the house, or controlled access to the house.