

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11416

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ASHLEY NICOLE HAYDT,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 1:18-cr-00469-RAH-SMD-2

Before JILL PRYOR, LUCK, and MARCUS, Circuit Judges.

PER CURIAM:

Ashley Haydt appeals her total sentence of 220 months' imprisonment, imposed after she was convicted of conspiracy to use an explosive device, malicious use of an explosive, and misprision of a felony. On appeal, Haydt argues that the district court erred in using U.S.S.G. § 2A2.1 to calculate her base offense level because she did not knowingly engage in conduct that created a risk of murder. After careful review, we affirm.

When reviewing a challenge to the applicability of the Guidelines, we consider legal issues *de novo*, review factual findings for clear error, and apply the Guidelines to the facts with due deference, which is akin to clear error review. *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010). A defendant may not be sentenced based on “groundless inferences.” *United States v. Lopez*, 898 F.2d 1505, 1512 (11th Cir. 1990). But a district court may make reasonable inferences “based on common sense and ordinary human experience.” *United States v. Philidor*, 717 F.3d 883, 885 (11th Cir. 2013). “The district court’s determination that the appellant [intended to cause] death or serious bodily injury is a finding of fact that will not be disturbed unless clearly erroneous.” *United States v. Honeycutt*, 8 F.3d 785, 787–88 (11th Cir. 1993). Additionally, the issue turns on the defendant’s “state of mind at the time [of the offense], and not the actual results of [her] actions.” *Id.*

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Under the 2018 Guidelines Manual, the guideline provision applicable to a defendant convicted of violating 18 U.S.C. § 844(i) ordinarily is U.S.S.G. § 2K1.4 and provides for a base offense level of 24 if the offense created a *substantial risk of death or serious bodily injury* to any person other than a participant in the offense. U.S.S.G. § 2K1.4(a)(1) (2018). However, when the offense was *intended to cause death or serious bodily injury*, the court should apply “the most analogous guideline from Chapter Two, Part A (Offenses Against the Person),” if the resulting base offense level is greater than that under § 2K1.4. *Id.* § 2K1.4(c)(1).

Section 2A2.1 of the Guidelines applies to assault with intent to commit murder and attempted murder. U.S.S.G. § 2A2.1 (2018). Under this section, the base offense level is 33 if the object of the offense would have constituted first degree murder, and an additional 2 points are added if the victim sustained serious bodily injury. *Id.* § 2A2.1(a)(1), (b)(1). In relevant part, for the purposes of § 2A2.1(a)(1), first degree murder is defined as “the unlawful killing of a human being with malice aforethought,” including any “kind of willful, deliberate, malicious, and premeditated killing.” 18 U.S.C. § 1111(a); U.S.S.G. § 2A2.1, comment. (n.1).

Section 2A2.2 applies to aggravated assault and provides for a base offense level of 14. U.S.S.G. § 2A2.2(a) (2018). Another five points are added if the victim sustained serious bodily injury. *Id.* § 2A2.2(b)(3)(B).

Here, the district court did not clearly err in imposing Haydt’s sentence. As the record reflects, Haydt’s convictions

stemmed from her scheme to bomb the vehicle of the father of one of her children, Terry Brooks. The plan was fleshed out at trial by Haydt's coconspirator, Sylvio Joseph King, the man who placed and detonated the bomb. According to King, he had met Haydt at work and they had become friends as Haydt's relationship with Brooks was breaking down. Eventually, Haydt began to discuss her custody battle with King, and King told her that he had some friends who could "straighten the matter out." About a month after King made this suggestion, Haydt asked King if he could get in touch with those friends.

From that point forward, Haydt and King started talking regularly about getting rid of Brooks altogether. Haydt texted King that she was "ready to only have to worry about me and my children." She asked King, "So you got this right? So it's just me raising my kids from then forward." She told King she was worried "that you don't have this," but she was trusting King to take care of her problem. At one point, King sent a picture of a pipe bomb to Haydt, to let her know he was serious. Haydt asked why he didn't "just take [a] rifle and shoot him."

As their plans progressed, Haydt told King where Brooks lived, and the day before the bombing, King sent Haydt a snapchat message that he'd placed the bomb. On the day of the bombing, Haydt told King what time Brooks left for work. Around that time, King drove down the road he knew Brooks would take to work and each time he approached a vehicle that looked like Brooks' truck, he would hit the detonator. Eventually, King approached the truck

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Brooks was driving, and the bomb went off. King sent Haydt a snapchat message that said, “Boom, I felt that from 150 feet away.”

When investigators arrived, they discovered that the rear passenger compartment behind and below the driver’s seat of Brooks’ truck was heavily damaged. Brooks testified that after the blast, he was taken to the emergency room, “in excruciating pain” with damage to his lower back, burns on his arms, and his ears ringing. Brooks had surgery to remove shrapnel and stayed in the hospital for four days.

At Haydt’s sentencing hearing, the district court was tasked with determining whether “the offense was intended to cause death or serious bodily injury.” U.S.S.G. § 2K1.4(c)(1). If so, it was to apply “the most analogous guideline from Chapter Two, Part A (Offenses Against the Person).” *Id.* Upon finding that Haydt had “intended to cause death or serious bodily injury,” the court applied U.S.S.G. § 2A2.1 -- assault with intent to commit murder; attempted murder -- as the most analogous guideline to the facts of this case. Using § 2A2.1 to establish the base offense level, the court ultimately sentenced Haydt to 220 months’ imprisonment.

The district court did not clearly err in concluding that § 2A2.1 was the most analogous guideline to this case, as provided for in § 2K1.4(c)(1). *See Rothenberg*, 610 F.3d at 624. Indeed, there is ample evidence in the record for the district court to have concluded that Haydt’s objective -- for Brooks to die, so that she could be the sole parent of their son -- constituted first degree murder. As we’ve detailed, King and Haydt had frequent conversations

about Brooks “disappearing” that increased after he filed for custody; Haydt expressly asked King to confirm that it would be “just [Haydt] raising [her] kids from then forward.” Further, after seeing the picture of a bomb, Haydt asked King why he did not just shoot Brooks with a rifle. She told him that, despite her worries that he “[didn’t] have this,” she hoped to have his word that King would “take care” of her problem. And, as King admitted on cross-examination, merely scaring Brooks would not have helped Haydt in her custody dispute. On this record, the district court reasonably inferred that the attack on Brooks was “premeditated” and that Haydt had made “a calculated effort to kill” him, and, thus, that the object of the offense constituted first degree murder. *Philidor*, 717 F.3d at 885.

As for Haydt’s claim that King’s decision to use a less deadly bomb than he’d originally planned undermines this conclusion, we disagree. King’s mental state does not determine what Haydt intended, and in any event, King testified that he wanted to kill Brooks. *See Honeycutt*, F.3d at 787. Likewise, to the extent Haydt argues that King’s testimony that she had been shocked about the bomb suggests that she did not knowingly create a risk of murder, we also are unpersuaded. King specifically testified that he lied to police about her involvement in the offense to protect her from criminal liability.

In short, the district court did not clearly err in concluding that § 2A2.1 was the most analogous guideline under § 2K1.4(c)(1).

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See U.S.S.G. § 2A2.1(a)(1); 18 U.S.C. § 1111(a). Accordingly, we affirm.

AFFIRMED.