

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10716
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDMOND NORKUS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cr-00180-MLB-1

Before JORDAN, JILL PRYOR, and KIDD, Circuit Judges.

PER CURIAM:

Edmond Norkus pleaded guilty to one count of conspiracy to commit wire fraud. At sentencing, the district court determined that he was responsible for more than \$13 million in losses and

imposed a sentence of 36 months' imprisonment. On appeal, he challenges his sentence, arguing that the district court made erroneous factual findings about the loss amount for which he was responsible. After careful consideration, we conclude that the district court did not clearly err in its loss-amount determination and affirm.

I.

Norkus and his co-conspirator, Brian Sperber, participated in a scheme to defraud purchasers and distributors of personal protective equipment ("PPE"). Sperber owned and operated Ark GBST, a healthcare supply distribution company. Norkus owned and operated Champion Resources, a logistics company that sometimes worked with Ark. Norkus and Sperber carried out their scheme through their companies.

During the early days of the COVID-19 pandemic when demand for PPE was high but supplies were hard to come by, Norkus and Sperber persuaded purchasers that Ark and Champion had access to available PPE. They collected millions of dollars in advance payments for the products. In fact, though, Sperber's PPE supplier had cut him off, and Sperber and Norkus did not have enough PPE to fill the purchasers' orders. Despite being unable to fill the orders, Norkus and Sperber kept the purchasers' money. In the section that follows, we describe the fraudulent scheme in more detail and discuss the proceedings in Norkus's criminal case.

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A.

Norkus and Sperber defrauded several victims through a fraudulent scheme centering on PPE distribution. In 2019, Ark became an authorized distributor for O&M Halyard, a manufacturer and wholesale distributor of PPE and other medical equipment. Under the distributorship arrangement, Sperber located customers who wanted to purchase PPE and placed their orders with O&M. O&M, in turn, shipped the PPE to Ark for distribution to the customers. Under the distributorship agreement, Ark generally had 60 days after placing an order to pay O&M.

Almost immediately after Ark became an authorized distributor, problems arose. It failed to make timely payments to O&M. O&M repeatedly warned Sperber that Ark needed to pay its outstanding balance and that O&M would no longer process orders from Ark if it did not make timely payments.

In early 2020, as COVID-19 spread throughout the world, demand for PPE skyrocketed. In February and March 2020, Ark sent payments to O&M to cover a portion of its outstanding balance, and O&M processed a few of its orders. But Ark still owed O&M a substantial amount of money. Because of the large outstanding balance, O&M refused to ship additional PPE to Ark or process additional orders.

Despite these problems obtaining PPE from O&M, Norkus and Sperber took orders from customers for millions of dollars in PPE. For example, in February 2020, Norkus, through his

company, Champion, agreed to sell PPE to ASL Industries, a broker that was seeking to purchase masks for a customer in China. To make it appear that Champion had masks ready to ship, Norkus sent ASL an invoice purportedly from O&M confirming that it had masks in stock. He also forwarded to ASL two additional emails purportedly from a manager at O&M confirming mask availability and saying that a deposit was needed to lock in the order. In fact, Norkus and Sperber fabricated the invoice and emails.

On February 10, ASL placed an order with Champion to purchase more than 12,000 cases of masks to be shipped two days later. ASL immediately wired Champion \$3,144,960, with an additional amount due to be paid when the masks were delivered.

Norkus and Sperber split the proceeds they received from ASL. Upon receiving ASL's payment, Champion wired approximately \$1,870,000 to Ark's bank account, which Sperber controlled. Norkus transferred \$875,000 from the Champion bank account to his personal bank account; he then used these proceeds to purchase a condominium.

ASL received no masks. It repeatedly questioned Norkus about the status of its order. In response, he sent a text message with a photograph of a bank wire transfer authorization showing that Champion had wired money to O&M to order the masks. In fact, Champion had not wired any money to O&M; Norkus fabricated the wire document. On another occasion, Norkus had a conference call with ASL about its order. On the call, Sperber, posing as an O&M employee, falsely told ASL that the masks it had

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ordered were on the way. On February 21, Champion refunded ASL \$219,000.¹

After providing the small refund, Norkus continued to promise ASL that the masks would be delivered. In March, he forwarded ASL several emails purporting to be from an O&M employee, providing status updates on ASL's order. Once again, Norkus fabricated the emails. In early April, ASL, which still had not received any masks, cancelled its order and demanded a refund. Norkus told ASL that the order with O&M would be cancelled and it would receive a refund in 48 to 72 hours. But it did not receive the promised refund. Over the next month, Norkus repaid ASL a total of \$1,600,000. After making these payments, he still owed ASL \$1,325,960.

In early 2020, another company, LHP Pharma, a pharmaceutical and medical products wholesaler, sought to purchase PPE from Sperber. In March 2020, Craig Currie, LHP's owner, met with Norkus and a representative for Ark at Champion's warehouse. At the warehouse, Norkus showed Currie stock that included pallets of gloves.

After seeing this stock of supplies, Currie placed an order for gloves with Ark. He gave Ark's representative a cashier's check for \$2,800,000. The representative delivered the cashier's check to Sperber, and he deposited it into Ark's bank account. Sperber then sent \$1,385,000 to Champion.

¹ The record does not reveal why Norkus provided the partial refund.

A day or two later, LHP received a delivery of gloves but not the full amount it had ordered. Instead of providing \$2,800,000 worth of gloves, Ark delivered only about \$1,500,000 worth. Sperber met with Currie and promised to make up the difference in future orders.

About a week later, on March 31, LHP placed a second order with Ark, this time for 7,200,000 masks. It wired an initial payment of \$8,250,000 to Ark's bank account. Ark was supposed to deliver the masks to LHP by April 15.

Ark did not deliver the masks as promised. On April 21, Norkus forwarded Currie an email that Sperber had reportedly received from O&M. In the email, O&M stated that the company had experienced a minor delay due to government paperwork but promised that it was ready to ship the masks. Norkus wrote to Currie that the email was for "[his] eyes only" and said, "I don't ever send stuff like this," but Norkus noted that the email came "from the big wheels at Corporate." Doc. 24 at 57.² Norkus also promised Currie, "I don't mess around." *Id.* In fact, Norkus and Sperber had fabricated the email from O&M.

A few days later, on April 30, Currie emailed Sperber demanding an update on the mask order. Later that day, Sperber responded that he expected the order to ship soon. The next day, on May 1, Norkus forwarded Currie an email from O&M, which

² "Doc." numbers refer to the district court's docket entries.

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reported that the order was shipping. Once again, Norkus and Sperber had fabricated the email.

At the same time, Norkus and Sperber were trying to persuade LHP to place additional orders for PPE. On May 1, Norkus forwarded Currie an email purportedly sent by an employee of another PPE manufacturer, Dukal, indicating that Ark was going to receive an allotment of masks. The same day, LHP placed a third order with Ark, this time for 24,600 cases of Dukal masks. LHP then wired \$2,500,000 to Ark. No masks were delivered. A few weeks later, Currie emailed Sperber asking about the status of this order. In response, Sperber sent him a Dukal document showing that the manufacturer had masks available. Norkus and Sperber had fabricated the Dukal emails as well. As it turns out, Ark never was an authorized distributor for Dukal.

B.

In the federal criminal case that followed, Norkus pleaded guilty to one count of conspiracy to commit wire fraud.³ After he entered a guilty plea, a probation officer prepared a presentence investigation report (“PSR”).

The PSR described the offense conduct. It described in detail Norkus’s and Sperber’s involvement in the transactions with ASL

³ In a separate criminal case, Sperber pleaded guilty to one count of conspiracy to commit wire fraud and received a sentence of 26 months’ imprisonment followed by a three year term of supervised release. He also was ordered to pay restitution.

and LHP. It also reported that O&M sustained a \$238,645.36 loss for PPE it supplied to Ark but for which it was never paid.

The PSR's relevant conduct section detailed that another company, Bold International, Inc., was a victim of the fraudulent scheme, too. In April 2020, Bold's representatives spoke with Sperber and Norkus about ordering PPE from Ark. One of those representatives, Brandon Olds, then traveled to Florida to visit Ark's warehouse. Norkus met with Olds and gave him a tour of the warehouse, showing him samples of gloves. After this meeting, Bold placed two orders with Ark for Dukal gowns and masks and wired Ark \$229,500 for the orders. Bold received only a portion of the supplies it ordered—about half of the gowns, which had a value of \$22,500, and none of the masks. Ark failed to refund Bold the \$207,000 that it had paid for PPE that never was delivered.

The PSR then addressed the loss amount that was attributable to Norkus. It reported that Norkus was responsible for the following loss amounts: for LHP, \$13,550,000; for ASL, \$3,144,960; for O&M, \$238,645.36; and for Bold, \$207,000. According to the PSR, the total loss amount attributable to Norkus was \$17,140,605.36.

The PSR then addressed Norkus's Sentencing Guidelines range. Because the relevant offense was conspiracy to commit wire fraud, the PSR applied a base offense level of six. Because the loss amount attributable to Norkus was more than \$9,500,000 but less than \$25,000,000, the PSR applied a 20-level enhancement. After applying a three-level reduction for acceptance of responsibility

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and a two-level reduction based on Norkus's status as a zero-point offender, the PSR determined that his total offense level was 21. The PSR reported that this total offense level combined with Norkus's criminal history category of I yielded a guidelines range of 37 to 46 months' imprisonment.

Norkus objected and raised several challenges to the PSR's loss amount. First, he argued that the loss amount should be reduced by \$1,819,000 to reflect the refunds that ASL had received. Second, he argued that the loss amount should be reduced by \$1,500,000 to reflect the value of the goods that LHP received for the first order. The government agreed to these adjustments to the loss calculation. Third, Norkus argued that the \$207,000 loss that Bold sustained should not be included in the loss amount. The government agreed that Norkus should not be held responsible for this loss amount. With these adjustments, the total loss amount attributable to Norkus was \$13,614,605.36.

Norkus challenged the loss amount on another ground. He argued that he should not be held responsible for the \$8,250,000 loss associated with LHP's second order.⁴ At the sentencing hearing, the government introduced evidence, including emails and documents, to establish that the \$8,250,000 loss was attributable to Norkus. It also called special agent Stephen

⁴ Before sentencing, Norkus challenged two other aspects of the PSR's loss amount determination. He argued that his loss amount should not include the amount Ark owed to O&M or the loss LHP sustained with respect to its third order. But he withdrew these objections.

Ryskoski, who had investigated the crime, to testify at the sentencing hearing.

Ryskoski testified about LHP's relationship with Norkus and Sperber. He explained that before LHP placed its first order with Ark, Norkus gave Currie, LHP's owner, a tour of his warehouse and showed Currie pallets of gloves. Upon seeing Norkus's supply of gloves, Currie placed LHP's first order with Ark. Ryskoski explained that Norkus had procured the gloves that were in the warehouse to fulfill an order from another customer, BD&S, which had already paid for them. But when LHP placed its order, Norkus shipped the gloves to LHP instead. He cancelled BD&S's order and refunded it more than \$1,000,000. Shortly after Norkus shipped the gloves to LHP, Sperber told him that there was a big deal in the works with LHP that would be worth more than \$27,000,000.

Ryskoski further testified that his investigation revealed that LHP had planned to place a series of orders for a large amount of PPE. He explained that LHP was purchasing supplies for its client, Traveler's Supply, Inc., which, in turn, was procuring supplies for United Healthcare Group. United Healthcare intended to place a series of orders for a large quantity of masks that it needed for its hospitals.

After considering the evidence, the district court overruled Norkus's objection and concluded that the \$8,250,000 loss LHP sustained for its second order was attributable to Norkus. It found that before LHP placed the second order, Norkus and Sperber were working together "to deceive customers into believing that they

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could deliver PPE in order to get advanced payments” and then continued to deceive customers when the PPE products they ordered were not timely delivered. Doc. 44 at 55. The court determined that the government had proven by a preponderance of the evidence that there was a “conspiracy before the second order for LHP” and that it was “reasonably foreseeable” that, as part of the conspiracy, Sperber would fraudulently obtain the \$8,500,000 payment from LHP. *Id.*

The court discussed in detail the basis for its finding that LHP’s second order was reasonably foreseeable to Norkus. It found that Norkus was “in on the relationship” with LHP “from the start.” *Id.* It discussed how at the time of LHP’s first order, Norkus knew that he and Sperber did not have sufficient supplies to fulfill the order, so he diverted gloves meant for BD&S to LHP to partially fulfill the order. The court found that Norkus took these steps to make LHP believe that he and Sperber could deliver PPE and convince it to place future orders with them. The court also found that Norkus knew that LHP intended to place additional future orders because he admitted that, before LHP’s second order, Sperber told him that “there was a much bigger \$27 million deal from LHP in the works.” *Id.* at 56. It found that LHP’s second and third orders were “part of a plan of a bigger transaction” that Norkus learned about “sometime shortly after the first delivery.” *Id.*

Based on the findings, the court included in Norkus’s loss amount the \$8,250,000 that LHP lost with its second order. It

determined that the total loss attributable to Norkus was \$13,614,605.36. Using this loss amount, it calculated Norkus's guidelines range as 37 to 46 months' imprisonment. It imposed a sentence of 36 months' imprisonment followed by a three-year term of supervised release. It also ordered Norkus to pay restitution. This is Norkus's appeal.

II.

We review for clear error the district court's loss amount determination. *United States v. Cavallo*, 790 F.3d 1202, 1232 (11th Cir. 2015). A factfinding is clearly erroneous if it leaves us with the "definite and firm conviction that a mistake has been committed." *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010) (citation modified).

III.

When, as here, a defendant is convicted of conspiracy to commit wire fraud, the Sentencing Guidelines generally call for a base offense level of six.⁵ See U.S. Sent'g Guidelines Manual § 2B1.1(a)(2). The defendant's offense level then increases based on the applicable loss amount. See *id.* § 2B1.1(b)(1). For example, if the loss amount is between \$3,500,000 and \$9,500,000, then 18 levels are added to the base offense level. *Id.* And if the loss amount is

⁵ If the defendant's offense of conviction has a statutory maximum term of imprisonment of 20 years or more, a base offense level of seven applies. See U.S.S.G. § 2B1.1(a)(1). Because the statutory maximum term of imprisonment for the offense of conspiracy to commit wire fraud is five years, 18 U.S.C. § 371, Norkus had a base offense level of six.

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between \$9,500,000 and \$25,000,000, 20 levels are added to the base offense level. *Id.*

At sentencing, the government bears the burden of proving the amount of the loss attributable to the defendant by a preponderance of the evidence. *Cavallo*, 790 F.3d at 1232. “The Sentencing Guidelines do not require a precise determination of loss”; instead, the “sentencing court need only make a reasonable estimate of the loss, given the available information.” *Id.* (citation modified).

In determining the loss amount, a court may consider “all relevant conduct” attributable to the defendant. *United States v. Rodriguez*, 751 F.3d 1244, 1256 (11th Cir. 2014). Relevant conduct includes “all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant.” U.S.S.G. § 1B1.3(a)(1)(A). In the case of jointly undertaken criminal activity, relevant conduct also includes “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). A district court may hold a participant in a conspiracy “responsible for the losses resulting from the reasonably foreseeable acts of co-conspirators in furtherance of the conspiracy.” *United States v. Hunter*, 323 F.3d 1314, 1319 (11th Cir. 2003).

The issue on appeal is whether the district court clearly erred when it held Norkus responsible for the \$8,250,000 loss that

LHP sustained with its second order. Norkus argues that the district court improperly relied upon “speculative inferences and unsubstantiated allegations” to find that Sperber’s acts in securing this order qualified as relevant conduct. Appellant’s Br. 6.

We conclude that the district court did not clearly err in finding that this loss was attributable to Norkus. The evidence in the record at sentencing, including unobjected-to statements in the PSR and Ryskoski’s testimony, showed that Norkus partnered with Sperber to carry out a scheme to defraud purchasers of PPE. The evidence also showed that Norkus met with Currie before LHP placed its first order and showed him that his company had PPE in stock. Currie then immediately placed an order for a large supply of gloves from Ark. To partially fulfill this order, Norkus diverted the supply of gloves that were intended for, and paid for by, BD&S. Norkus’s actions made it appear to Currie that Norkus and Sperber had access to large quantities of PPE. In addition, Norkus admitted that after LHP placed its first order but before it placed its second order, Sperber told him that a larger \$27,000,000 deal with LHP was in the works. Thus, Norkus was aware of the possibility that LHP would place additional orders for PPE. Given this evidence, we cannot say that the district court clearly erred in concluding that Sperber’s actions in connection with the second LPE order—for which LHP paid \$8,250,000 but Sperber failed to deliver any PPE—were in furtherance of their conspiracy and reasonably foreseeable to Norkus. *See Hunter*, 323 F.3d at 1319.

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Norkus nevertheless attacks the district court’s decision to treat the second order as relevant conduct. He argues that the government failed to carry its burden to prove that the loss was attributable to him because it “offered no live testimony from LHP representatives” or any “direct emails or communications involving Norkus regarding the disputed transaction[.]” Appellant’s Br. 8. But Norkus cites no authority showing that the government was required to introduce these specific types of evidence to prove by a preponderance of the evidence that Sperber’s actions qualified as relevant conduct that could be attributed to him. After considering the record before the district court at sentencing, which included the unobjected-to statements in the PSR and Ryskoski’s testimony, we are not left with a definite and firm conviction that the district court made a mistake when it found that the government had established by a preponderance of the evidence that the co-conspirator’s conduct in connection with LHP’s second order qualified as relevant conduct. *See United States v. Pierre*, 825 F.3d 1183, 1197 (11th Cir. 2016) (recognizing that a district court may make factual findings about loss amount based on undisputed statements from the PSR as well as evidence presented at the sentencing hearing). Accordingly, we affirm Norkus’s sentence.

AFFIRMED.