

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11032
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES HARDING,

a.k.a. Old School,

a.k.a. Shakey,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:21-cr-00165-TFM-MU-1

Before WILLIAM PRYOR, Chief Judge, and JORDAN and KIDD, Circuit
Judges.

PER CURIAM:

James Harding appeals his conviction and sentence for conspiracy to possess and distribute heroin. 21 U.S.C. § 846. He challenges the sufficiency of the evidence and the reasonableness of his sentence. He also argues that the district court abused its discretion by admitting evidence from a search of his home. We affirm.

I. BACKGROUND

In 2019, Harding was charged with conspiracy to possess and distribute heroin, 21 U.S.C. § 846, and possession with intent to distribute heroin, 21 U.S.C. § 841(a)(1), both of which a jury found him guilty after a trial. The district court sentenced him to a total of 960 months of imprisonment, consisting of 480 months on each count, to run consecutively.

In an earlier appeal, Harding challenged the admission of evidence seized during a 2021 search of his residence in Birmingham as intrinsic to the charged conspiracy. We held that although the evidence was admissible, under Federal Rule of Evidence 404(b), to establish that Harding had the intent to distribute heroin, and the district court abused its discretion by admitting the evidence as intrinsic and by denying Harding's request for an instruction that the jury could consider the evidence only for a limited purpose. We vacated and remanded for a new trial. *United States v. Harding*, 104 F.4th 1291 (11th Cir. 2024).

Before his second trial, Harding moved to exclude the evidence seized during the 2021 search of his home. He argued that if the district court admitted the evidence, the government should be required to articulate the purpose of the evidence and the jury

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should be instructed that it may not consider the items seized in that search as evidence that he committed the offenses alleged in the indictment. The district court ruled that the evidence was admissible and agreed to give a limiting instruction. The government stated that the evidence would corroborate Jeremy Snowden's testimony that Harding was his heroin supplier, establish Harding's knowledge of heroin, prove his motive to participate in the conspiracy, and be relevant to his identity. Harding objected that corroborating Snowden's testimony was not a valid reason for admission under Rule 404(b), but the district court overruled his objection.

At trial, the government first called Matthew McCrary, a special agent of the Federal Bureau of Investigation, who testified that he had received information that Kendrick Patrick was responsible for the distribution of a large quantity of controlled substances in Alabama, so McCrary obtained authority for a wiretap of Patrick's phone, during which he confirmed that Snowden and his associates were receiving shipments of cocaine and heroin. During the calls, Snowden referred to someone called "Old School" when discussing heroin in Birmingham.

Snowden was arrested after a shipment of cocaine sent to him was seized. Agents found both cocaine and heroin at Snowden's residence. After his arrest, Snowden agreed to cooperate, and identified Old School as his heroin supplier in Birmingham. He pro-

vided officers with a physical description of Old School and information about the house where he lived. The residence belonged to Harding, who was then also arrested.

The government called Snowden who testified about his plea agreement and his reduced sentence for cooperating with the government. Snowden testified that he began distributing cocaine while under supervision for a prior offense. His associates later introduced him to distributors of heroin, and in 2017, an associate named Quantis Clark told him that he obtained heroin from someone called Old School. Clark introduced Snowden to Old School as “Snow.” They discussed prices and how to distribute heroin. Snowden identified Harding in the courtroom as Old School.

Snowden testified that, during this initial meeting, Harding agreed to give him two ounces of heroin, which Snowden was then to cut with icetol and sell to a friend. Snowden paid Old School about \$5,000 for two ounces of heroin. Snowden later received heroin, through Clark, once or twice a week for up to two years, until his arrest in 2019. Snowden testified that the heroin found in his home upon his arrest was from Harding. The government then introduced and played for the jury several wiretapped phone calls between Snowden and his associates, including Clark, mentioning Old School.

Snowden testified that he was able to provide officers with information about where Harding lived because Clark had pointed out his house while the two had been driving through Harding’s neighborhood one day. When shown a photograph of Harding’s

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house, Snowden confirmed that it was the house Clark had identified. He had also previously identified Harding in a photo lineup as Old School.

The government also called Chad Bailey, a special agent of the Alabama Bureau of Investigation. Bailey testified that he participated in a search of Harding's home on September 15, 2021. Harding offered a continuing objection to Bailey's testimony. The district court instructed the jury that Harding was on trial only for the crimes alleged in the indictment, not for uncharged crimes. Bailey testified about contraband found during the 2021 search, including firearms, ammunition, and various controlled substances. On cross, Bailey testified that Harding had not been charged in connection with any of the drugs seized during that search, and that neither the firearms nor the drugs were taken from his person.

After the government rested, Harding moved for judgment of acquittal. He argued that Snowden's uncorroborated testimony was insufficient to prove that he was Old School or that he was involved in the conspiracy. The district court denied the motion. After the defense rested the next day, Harding renewed his motion, and the district court again denied it.

The district court instructed the jury, under Rule 404(b), about the limited purpose for which it could consider uncharged conduct:

Now, during the trial, you heard evidence of the acts allegedly done by the defendant on other occasions that may be separate to acts with which the

defendant is currently charged. That evidence is admitted and may be considered by you for the limited purpose of assisting you in determining whether the defendant had the requisite knowledge or intent necessary to commit the crime charged in ¶ the Indictment. You may not consider this evidence for any other purpose.

The defendant is currently on trial only for the crimes charged in the Indictment. You may not convict a person simply because you believe that person may have committed another crime not charged in the Indictment.

The jury found Harding guilty of the conspiracy charge, but not guilty of the possession charge. Two weeks later, Harding moved for judgment of acquittal notwithstanding the verdict or, in the alternative, for new trial because the district court erred in admitting evidence of the 2021 search of his home. He also argued that the evidence was insufficient to prove his guilt. He also moved to dismiss based on violations of double jeopardy and due process.

A probation officer prepared a presentence investigation report that calculated a base offense level of 30 based on an amount of 2.5 kilograms of heroin. U.S.S.G. § 2D1.1(c)(5). The report added 2 levels for a co-conspirator possessing a dangerous weapon based on a shooting during an attempted robbery at the apartment of Kendrick Patrick who distributed drugs that Harding gave Snowden. *Id.* § 2D1.1(b)(1). The report added 3 levels for Harding's role as a manager or supervisor of the conspiracy. *Id.* § 3B1.1(b). Finally, the report found that Harding was a career offender under section

4B1.1(a), but because his adjusted offense level was higher than the applicable offense level for career offenders, his applicable offense level remained 35. The report found that Harding’s criminal history category was VI based on 15 criminal history points and that his category would have been VI in any event because he was a career offender. Based on a total offense level of 35 and a criminal history category of VI, the report calculated a guidelines range of 292 to 365 months of imprisonment.

Harding filed objections to the report, which the district court overruled. The district court also denied Harding’s post-judgment motions. It sentenced him to 365 months of imprisonment followed by 5 years of supervised release based on his lack of remorse and “extensive criminal history which represent[ed] the pattern and seriousness of his criminal behavior.” It also stated that it would have imposed the same sentence “irrespective of the guidelines.”

II. STANDARDS OF REVIEW

Two standards govern our review. We review *de novo* whether sufficient evidence supports the conviction. *United States v. Jiminez*, 564 F.3d 1280, 1284 (11th Cir. 2009). In reviewing the sufficiency of the evidence, we view the record in the light most favorable to the government. *Id.* The evidence is sufficient if “a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt.” *Id.* at 1284-85 (quotation marks omitted). And we review the admission of evidence for abuse of discretion. *Harding*, 104 F.4th at 1295. A district court abuses its discretion

when a ruling “rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact.” *Id.* at 1295-96 (quotation marks omitted). We also review the reasonableness of a sentence for abuse of discretion. *United States v. Sotelo*, 130 F.4th 1229, 1244 (11th Cir. 2025). A district court abuses its discretion and imposes a substantively unreasonable sentence when it fails to afford consideration to relevant factors that were due significant weight, gives significant weight to an improper or irrelevant factor, or commits a clear error of judgment in considering the proper factors. *Id.*

III. DISCUSSION

We divide our discussion into three parts. First, we explain that sufficient evidence supports Harding’s conviction. Second, we explain that the district court did not abuse its discretion by admitting evidence of the search of Harding’s home. Finally, we explain that Harding’s sentence is reasonable.

A. *Sufficient Evidence Supports Harding’s Conviction*

Harding argues that insufficient evidence supports his conviction. He contends that the “self-serving testimony” of Snowden, the main witness, was inconsistent and incredible, largely because he cooperated to receive a reduced sentence. We disagree.

Credibility determinations “are the exclusive province of the jury, and on sufficiency review we must assume that they were answered in a manner that supports the verdict, unless the witness is unbelievable as a matter of law.” *United States v. Gregory*, 128 F.4th 1228, 1247 (11th Cir. 2025) (alternations adopted, quotation marks

omitted). Testimony is incredible only if it presents facts the witness could not have possibly observed or events that could not have occurred under the laws of nature. *United States v. Thompson*, 422 F.3d 1285, 1291 (11th Cir. 2005).

The government presented sufficient evidence that Harding was guilty of the conspiracy charged. *Jiminez*, 564 F.3d at 1284-85. To sustain a conviction for conspiracy to possess with intent to distribute a controlled substance, *see* 21 U.S.C. § 846, the government must prove that “(1) an illegal agreement existed to possess with the intent to distribute a controlled substance; (2) each defendant knew of the agreement; and (3) each defendant knowingly and voluntarily joined the agreement.” *Gregory*, 128 F.4th at 1246 (quotation marks omitted). The government need not prove that a defendant knew every detail of the conspiracy or participated in every stage of it. *Id.* It must prove only knowledge of the essential nature of the conspiracy. *Id.* Snowden’s testimony allowed the jury to infer that Harding knowingly entered into an agreement to possess with the intent to distribute heroin.

B. The District Court Did Not Abuse Its Discretion in Admitting Evidence of the 2021 Search of Harding’s Home.

Harding argues that the evidence seized during the 2021 search of his home was irrelevant to the conspiracy charged, which ended in April 2019, and was unduly prejudicial. Although Federal Rule of Evidence 404(b) prohibits the introduction of evidence of uncharged acts “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the

character,” that evidence may be introduced for other purposes, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(1)-(2).

In Harding’s first appeal, we ruled that the “2021 search evidence was admissible under Rule 404(b) to establish Harding’s intent to distribute heroin” and the probative value of the evidence secured during the search was not substantially outweighed by the risk of unfair prejudice. *Harding*, 104 F.4th at 1301; *see United States v. Jordan*, 429 F.3d 1032, 1035 (11th Cir. 2005) (“The law of the case doctrine bars relitigation of issues that were decided, either explicitly or by necessary implication, in an earlier appeal of the same case.”). The district court did not abuse its discretion in admitting this evidence with a limiting instruction on retrial.

C. Harding’s Sentence Is Reasonable.

Harding contends that the district court procedurally erred in calculating his base offense level and in applying the career offender enhancement, firearm enhancement, and manager enhancement. But when a defendant challenges the procedural reasonableness of his sentence, we may affirm without reaching the procedural issue if the district court stated, as it did here, that it would have imposed the same sentence, in any event, and the sentence is substantively reasonable. *United States v. Grushko*, 50 F.4th 1, 18 (11th Cir. 2022). “[I]t would make no sense to set aside a reasonable sentence and send the case back to the district court because of an error in calculating the Sentencing Guidelines range since it has already told us

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that it would impose exactly the same sentence, a sentence we would be compelled to affirm.” *Id.* (alterations adopted, quoting *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006)). The defendant bears the burden of proving that his sentence is unreasonable based on the record and the statutory sentencing factors. *Id.* (citing *Keene*, 470 F.3d at 1349-50).

Harding’s sentence is reasonable. The district court imposed a sentence of 365 months of imprisonment based on Harding’s lack of remorse and “extensive criminal history,” the seriousness of the offense, and the need for punishment, deterrence, and incapacitation. We are not “left with the definite and firm conviction that the district court committed a clear error of judgment” in sentencing Harding to 365 months of imprisonment. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc).

IV. CONCLUSION

We **AFFIRM** Harding’s conviction and sentence.