

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13140
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE DAVID FIGUEROA PACHECO,

a.k.a. Pepas Plug,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:24-cr-00200-PGB-NWH-2

Before JORDAN, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Jose David Figueroa Pacheco appeals his sentence of 72 months' imprisonment for one count of distributing and possessing

with intent to distribute a controlled substance. He argues that the district court erred by not applying a zero-point offender adjustment to his guidelines calculation because he drove another individual with a gun to a drug transaction. For the reasons discussed below, we affirm.

I

A

“We review de novo the district court’s interpretation and application of the Sentencing Guidelines. We accept a district court’s factual findings unless they are clearly erroneous.” *United States v. Morilla*, 177 F.4th 1291, 1297 (11th Cir. 2026) (citation omitted). “A factual finding is clearly erroneous when the record does not support it or when we are left with the definite and firm conviction that a mistake has been committed.” *United States v. Munoz*, 112 F.4th 923, 932 (11th Cir. 2024) (quotation omitted). In making factual findings, the district court may consider, among other things, evidence from undisputed statements in the presentence investigation report and evidence presented at the sentencing hearing. *See United States v. Owens*, 96 F.4th 1316, 1321 (11th Cir. 2024). The sentencing court may also make reasonable inferences from such evidence. *See id.*

B

The Sentencing Guidelines provide a two-level reduction for zero-point offenders if the defendant meets certain criteria in his own history and offense conduct. *See* U.S.S.G. § 4C1.1(a). One of the requirements for this reduction is that “the defendant did not

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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.” § 4C1.1(a)(7). The adjustment does not provide any specific definition for “transport.” See § 4C1.1(b).

The guidelines also provide for a “Safety Valve” sentence below the statutory minimum in cases where the district court finds, among other criteria, that the defendant did not “possess a firearm or other dangerous weapon (or induce a participant to do so) in connection with the offense.” § 5C1.2(a)(2). “[M]ere possession by a co-defendant, while sufficient to trigger [a specific offense characteristic enhancement], is insufficient to knock a defendant out of the safety-valve protections of § 5C1.2.” *United States v. Carrasquillo*, 4 F.4th 1265, 1273 n.1 (11th Cir. 2021) (cleaned up). The zero-point offender adjustment similarly requires that the firearm conduct take place “in connection with” the offense. See § 4C1.1(a)(7).

We have treated the Safety Valve reduction as requiring evidence that a firearm was available for use as a weapon or in a manner that would facilitate the drug offense, such as selling the firearm or emboldening the defendant. See *United States v. Carrillo-Ayala*, 713 F.3d 82, 89, 92, 96–97 (11th Cir. 2013). There is a strong presumption that, when a firearm is in close proximity to the offense, it is possessed in connection with it:

A firearm found in close proximity to drugs or drug-related items simply “has”—without any requirement for additional evidence—the potential to facilitate the drug offense. A defendant seeking relief under the safety valve, despite his possession of a weapon found in proximity to drug-related items, will have a difficult task in showing that, even so, there is no connection with the drug offense so the safety valve applies.

Id. at 92. This presumption can be negated by “other facts, such as whether the firearm is loaded, or inside a locked container.” *Id.*

A firearm can facilitate a drug offense when it is present so that it can be used as a weapon should it become necessary to facilitate the offense. *See id.* at 93–94. This is so, for example, when a firearm is brought for protection—either from the other criminal entity or from law enforcement. *See id.* That type of protection facilitates the drug offense because it emboldens the offender. *See id.* at 93. Additionally, a firearm facilitates a drug offense when it “serv[es] as an integral part of a drug transaction as in a barter situation.” *Id.* at 96. *See also United States v. Jackson*, 997 F.3d 1138, 1141–42 (11th Cir. 2021).

Unlike the Safety Valve reduction, a defendant can be disqualified from the zero-point offender adjustment for transporting, instead of only for possessing, a firearm. *Compare* § 4C1.1(a)(7), *with* § 5C1.2(a)(2).

II

The district court found that Mr. Figueroa Pacheco's offense level could not be reduced under the zero-point offender adjustment in § 4C1.1(a). Because the district court did not clearly err in this determination, we affirm Mr. Figueroa Pacheco's sentence.

In determining that the zero-point offender adjustment did not apply to Mr. Figueroa Pacheco, the district court relied on the "plain language" of § 4C1.1(a)(7). *See* D.E. 177 at 16. It reasoned: "Applying the language [the guideline] give[s] me, transport means transport. And if you're the driver of the individual carrying the weapon in connection with the offense, the negotiated offense was drugs and gun, you transported in connection with the offense." *See id.* The district court also considered "the evidence of the record," including that Mr. Figueroa Pacheco "drives up to a preordained drug transaction for drugs and gun." *Id.* at 15. It noted that there was "no evidence to support" the suggestion that it was a "surprise" to Mr. Figueroa Pacheco that the passenger in the car he was driving had a gun. *See id.* (describing the gun at issue as "big" and something Mr. Figueroa Pacheco could "see").

On the record before us, we discern no clear error. Similar to the district court's interpretation of § 4C1.1(a)(7) and its use of the word "transport," for example, a survey of dictionaries indicates that the verb transport means "[t]o carry or convey (a thing) from one place to another." *Transport*, *Black's Law Dictionary* (12th ed. 2024). *See also Transport*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/transport> ("to transfer or convey from one place to another"); *American Heritage*

Dictionary of the English Language 1847 (5th ed. 2011) (“[t]o move or carry (goods, for example) from one place to another; convey”).

Mr. Figueroa Pacheco argues that § 4C1.1(a)(7) requires a defendant’s knowledge of the transport—that is, that “transport means knowingly moving the firearm as an object in the carriage when exercising control over the firearm’s movement.” Appellant’s Br. at 26. In his view, merely “driving a vehicle in which another person possesses a gun is not enough” to establish the requisite knowledge. *See id.* Even assuming without deciding that Mr. Figueroa Pacheco is correct that § 4C1.1(a)(7) requires him to have had knowingly transferred the gun, the district court did not clearly err in its assessment that the evidence did not reflect that the gun was “hidden” or a “surprise” to Mr. Figueroa Pacheco. *See* D.E. 177 at 15 (“Driving him with a gun that you can see is knowledge It’s not hidden. It’s not a derringer. It’s big. He can see it.”). As we have explained, a sentencing court is permitted to make “[r]easonable inference[s]” from the evidence. *See Owens*, 96 F.4th at 1321.

One final note. On appeal, Mr. Figueroa Pacheco asserts that his sentence is “procedurally and substantively unreasonable.” Appellant’s Br. at 30. In substance, though, the argument that he presents sounds in procedural unreasonableness. *See, e.g., United States v. Pugh*, 515 F.3d 1179, 1190 (11th Cir. 2008). Regardless, the Sentencing Guidelines called for an advisory range of 63 to 78 months’ imprisonment, and Mr. Figueroa Pacheco’s sentence of 72 months falls within that range. *See* D.E. 177 at 26. *See also Gall v.*

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United States, 552 U.S. 38, 51 (2007) (“If the sentence is within the Guidelines range, the appellate court may . . . apply a presumption of reasonableness.”). On this record and based on Mr. Figueroa Pacheco’s limited argument on substantive reasonableness, we discern no error.

III

The district court did not clearly err in determining that Mr. Figueroa Pacheco’s offense level could not be reduced under the zero-point offender adjustment of § 4C1.1(a) because he had transported a firearm in connection with his offense. We therefore affirm.

AFFIRMED.