

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 15, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JADE CHRISTIAN NICHOLS, a/k/a
Smalls,

Defendant - Appellant.

No. 22-6079
(D.C. No. 5:20-CR-00130-SLP-1)
(W.D. Okla.)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JADE CHRISTIAN NICHOLS, a/k/a
Smalls,

Defendant - Appellant.

No. 22-6080
(D.C. No. 5:21-CR-00222-SLP-1)
(W.D. Okla.)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JADE CHRISTIAN NICHOLS, a/k/a
Smalls,

Defendant - Appellant.

No. 22-6165
(D.C. No. 5:22-CR-00103-PRW-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **TYMKOVICH, EID, and CARSON**, Circuit Judges.

Jade Christian Nichols appeals from multiple convictions stemming from offenses he committed while being housed in federal custody as a pretrial detainee. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we have consolidated these appeals for purposes of disposition. We affirm in all respects.

I. BACKGROUND & PROCEDURAL HISTORY

A. Witness Tampering

The Irish Mob Gang is an Oklahoma prison gang that uses associates outside of prison to traffic in illegal drugs. In 2018, the federal government brought an indictment in the Western District of Oklahoma charging dozens of gang members and associates with crimes related to the gang’s drug-dealing activities. Some indicted co-conspirators chose to cooperate with the government, including Justin Schneider, a gang member; and Irwin Mancilla, a non-member from California who supplied the gang with methamphetamine.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Nichols is an Irish Mob Gang member, but he was not named in the 2018 indictment. In October 2019, rather, he was arrested in El Reno, Oklahoma, on suspicion of unlawfully possessing a firearm. In January 2020, a federal grand jury in the Western District of Oklahoma indicted Nichols on one count of being a felon in possession of a firearm. The government housed Nichols in a county jail pending trial. The jail was under contract with the government to house federal detainees.

As it turned out, Mancilla—one of the cooperators in the 2018 case—was being housed at the same jail as Nichols, and in the same pod. On February 20, 2020, Nichols and Mancilla were both in the pod's common area. With no apparent provocation or warning, Nichols blindsided Mancilla with a punch to the head. The attack knocked Mancilla to the ground where Nichols continued to strike him. Eventually the fight was broken up, but it left Mancilla with a broken jaw.

Jail officials transferred Nichols to D Pod, an administrative segregation pod. D Pod housed another of the cooperators, Schneider. Four days after attacking Mancilla, Nichols attacked Schneider in D Pod's common area, again without apparent provocation or warning.

On March 6, 2020, the government brought Nichols to the federal courthouse to be arraigned on a superseding indictment in his felon-in-possession case. He ended up sharing a holding cell with Joshua Stankewitz, an Irish Mob member and an indicted co-conspirator under the 2018 indictment. Stankewitz also happened to be a government cooperator, although Nichols did not know that yet. According to

Stankewitz, Nichols bragged to him about attacking Mancilla and Schneider at the direction of a gang leader, Anthony Sullivan.¹

In June 2020, a federal grand jury indicted Nichols on two counts of witness tampering, specifically, the attacks on Mancilla and Schneider. That case went to trial in June 2021. The trial featured testimony from Mancilla, Schneider, and Stankewitz, among others. The jury found Nichols guilty on both counts.

B. Witness Retaliation

Back at the county jail, Schneider was being housed in another administrative segregation pod known as Q Pod. For unexplained reasons, jail officials soon transferred Nichols to the same pod. In late July 2021, Nichols and a gang associate successfully executed a scheme to escape from their shared cell and attack Schneider while he was in the common area.

Based on this event, a federal grand jury indicted Nichols on one charge of witness retaliation (*i.e.*, retaliation against Schneider for testifying against him in the witness-tampering case). That case went to trial in December 2021, and the jury found Nichols guilty.

C. Sentencing for Witness Tampering and Witness Retaliation

The district court held a combined sentencing proceeding for Nichols's witness-tampering and witness-retaliation convictions. The district court sentenced

¹ Sullivan was also being prosecuted under the 2018 indictment. No later than December 2019, the government disclosed to Sullivan that Mancilla and Schneider (Nichols's eventual victims) planned to assist the government's case.

Nichols to 218 months' imprisonment on each conviction, running concurrently to each other but consecutive to his 120-month conviction in the felon-in-possession case.²

Nichols filed separate notices of appeal from the witness-tampering and witness-retaliation judgments. Those notices became, respectively, Nos. 22-6079 and 22-6080 in this court.

D. Assault on a Federal Officer

Following his witness-retaliation trial, the government transferred Nichols to a different county jail, which, like the previous facility, was under contract with the government to house federal detainees. There, Nichols attacked a jail sergeant who was trying to subdue Nichols's cellmate.

This event led to a grand jury indictment for assaulting a federal officer, causing bodily injury. The case went to trial in June 2022 and the jury found Nichols guilty. The district court eventually sentenced Nichols to 210 months' imprisonment on that conviction, with 120 months to run consecutively to his other sentences. Thus, Nichols's effective total sentence became 458 months (120 months for illegally possessing a firearm, plus 218 months for witness tampering and witness retaliation, plus 120 months for assaulting a federal officer).

² In late March 2020—before the witness-tampering indictment—Nichols went to trial in his felon-in-possession case, and the jury found him guilty. The district court sentenced him to 120 months' imprisonment. We affirmed that conviction and sentence. *See United States v. Nichols*, No. 20-6198, 2022 WL 1569129, at *1 (10th Cir. May 18, 2022), *cert. denied*, 143 S. Ct. 326 (2022).

Nichols timely filed a notice of appeal from the assault judgment, which became No. 22-6165 in this court.

II. ANALYSIS

A. Witness Tampering: Sufficiency of the Evidence as to Mancilla

The federal witness-tampering statute covers various acts, but the government’s theory in this case was that Nichols attacked Mancilla and Schneider “with the intent to . . . influence, delay, or prevent [their] testimony” against Irish Mob Gang members, particularly Anthony Sullivan, one of the leaders. 18 U.S.C. § 1512(a)(2)(A). Nichols claims the jury lacked sufficient evidence to find beyond a reasonable doubt that this intent motivated his attack on Mancilla, who was not a member of the Irish Mob Gang.

“We review legal sufficiency of evidence *de novo*, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences from the evidence in favor of the verdict.” *United States v. Kaspereit*, 994 F.3d 1202, 1207 (10th Cir. 2021). “We consider all the evidence, both direct and circumstantial, but we will not weigh it or make credibility determinations.” *Id.* “We will reverse and acquit only when no reasonable jury could find the defendant guilty beyond a reasonable doubt.” *Id.* (internal quotation marks omitted).

Stankewitz was the government’s key witness regarding intent. He testified that Nichols told him he attacked Mancilla (and Schneider) on orders from Sullivan, because they were cooperating with the government. Nichols does *not* claim that this testimony, if believed by the jury, is insufficient to find intent beyond a reasonable

doubt. Nichols merely claims that Stankewitz was “unreliable” because “[h]e was given a quarter pound of methamphetamine on a frequent basis by Schneider.” Aplt. Opening Br. at 25. A quarter pound of methamphetamine is much larger than a user quantity, *see, e.g., United States v. Strickland*, 594 F.3d 1031, 1032 (8th Cir. 2010) (describing “less than a gram of methamphetamine” as “a user quantity”), so we presume Nichols means to say that Stankewitz was facing a potentially long sentence under the 2018 indictment and had a reason to give false testimony in Nichols’s case, in hopes of lenience. *See* Aplt. Opening Br. at 25 (noting “Stankewitz had a significant amount to gain by a reduction in sentence through his testimony”). But this is ultimately an attack on Stankewitz’s credibility, and we may not weigh credibility, *Kaspereit*, 994 F.3d at 1207.

Stankewitz’s testimony gave the jury sufficient evidence to find that Nichols attacked Mancilla with the intent to interfere with his expected testimony against Irish Mob Gang members, whether or not Mancilla was himself a member of the gang. We therefore reject Nichols’s sufficiency-of-the-evidence challenge.

B. Witness Retaliation: Surveillance of Jury Deliberations

As part of COVID-19 safety protocols, the jury in Nichols’s witness-retaliation case did not deliberate in a designated jury deliberation room. They instead deliberated in a separate courtroom, allowing each juror to maintain social distance. Like all courtrooms in the building, this courtroom included a video-only security camera. After the jury’s verdict, it came to light that a court security officer (CSO)

had used that camera to watch the jury deliberating. Those deliberations lasted about an hour and a half, but the record does not say how long the CSO was watching.

Nichols moved to declare a mistrial or, in the alternative, for a new trial. He claimed that the CSO's actions amounted to per se prejudicial error requiring dismissal of the indictment. The district court denied the motion, and Nichols now challenges that denial. We review for abuse of discretion. *United States v. Kupfer*, 792 F.3d 1226, 1232 (10th Cir. 2015) (denial of mistrial); *United States v. Robertson*, 473 F.3d 1289, 1294 (10th Cir. 2007) (denial of motion for new trial).

On appeal, Nichols does not renew his argument that this circumstance amounts to per se prejudicial error. He instead cites cases examining whether additional persons in the jury room had a “chilling effect” on the jurors. *United States v. Olano*, 507 U.S. 725, 739 (1993) (internal quotation marks omitted) (referring to alternate jurors); *United States v. Dempsey*, 830 F.2d 1084, 1090–91 (10th Cir. 1987) (internal quotation marks omitted) (referring to an interpreter for a deaf juror). Yet he acknowledges that “the record is also scant on information on if[] the jurors were aware that . . . they were being monitored or aware of the cameras.” Aplt. Opening Br. at 21.

“Scant” is an overstatement. The record contains no information about whether the jurors were aware of the camera or its use during their deliberations. Anticipating the problem, Nichols asks, “[I]sn’t the secret monitoring of a jury just as dangerous if not more? . . . Future jurors should have the confidence in knowing that

what is demonstrated and what actions are taken in deliberations remain[] confidential.” *Id.* at 22.

We do not discount the seriousness of the issue, but there is simply no showing that the CSO’s actions had any effect on the jury. If the government wishes to reassure future jurors, despite the lack of any known effect on *this* jury, it has the means to do so. *See* 18 U.S.C. § 1508(b) (forbidding unauthorized listening to or observation of a federal jury). But Nichols points us to no case law permitting the court to void a jury verdict based on intrusions into the sanctity of jury deliberations of which the jurors themselves were not aware. We therefore find no abuse of discretion in the district court’s decision to deny Nichols’s motion for mistrial or new trial.

C. Substantive Reasonableness of the Sentences

As noted, Nichols’s total effective sentence is 458 months. First, the district court sentenced him to 120 months for illegally possessing a firearm. Then, in a later proceeding, the district court sentenced him to 218 months for witness tampering and witness retaliation, to run consecutive to the earlier sentence. Finally, in a third proceeding (before a different district judge), Nichols received 210 months for assaulting a federal officer, with 120 of those months consecutive to the previous sentences.

Nichols challenges his sentences as substantively unreasonable. “We review the substantive reasonableness of a sentence for abuse of discretion.” *Kaspereit*, 994 F.3d at 1207.

Many of Nichols's arguments appear to assume the district court sentenced him in a single proceeding through which it could craft an overall sentence viewing his various convictions together. No such proceeding took place here. We therefore ignore any argument based on this erroneous assumption.

The only argument we can discern that does not rely on the single-proceeding assumption relates to Nichols's last sentencing proceeding, regarding his assault on a federal officer. The guidelines range for that offense was 210 to 240 months. That range resulted, in part, from Nichols's career-offender status. Nichols says that, but for his career-offender status, his guidelines range would have been 41 to 51 months.

We are not sure what Nichols means to argue. He does not claim the district court erroneously treated him as a career offender. If he means to say the district court created an "unwarranted sentence disparit[y]" as between himself and "defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6), he does not specifically argue as much. And if he means to argue as much, he has not explained how the district court's application of the career-offender guidelines could be substantively unreasonable, given Congress's policy choice that career offenders receive a sentence "at or near the maximum term authorized," 28 U.S.C. § 994(h).

For these reasons, we reject Nichols's substantive reasonableness challenges.

III. CONCLUSION

We affirm the convictions and sentences at issue in these consolidated appeals.

Entered for the Court

Joel M. Carson III
Circuit Judge