

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States v. Faulkner and Sykes

885 F.3d 488 (7th Cir. 2018) · No. Nos. 16-2860 & 16-3525 · Decided March 19, 2018

SUMMARY

The Seventh Circuit affirmed the convictions and sentences of Joseph Faulkner and Otis Sykes arising from heroin and cocaine trafficking associated with the Double I gang in Chicago. The court rejected Faulkner’s challenges concerning sufficiency of the evidence, withdrawal from the conspiracy, co-conspirator statements, and double jeopardy. It also held that Sykes’s above-Guidelines sentence was reasonable under 18 U.S.C. § 3553(a).

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Stadtmueller; Frank H. Easterbrook; Michael S. Kanne; Michael B. Brennan
JURISDICTION	Federal
DECIDED	March 19, 2018
DOCKET	Nos. 16-2860 & 16-3525
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated criminal appeals from convictions and sentences entered after a bench trial in the United States District Court for the Northern District of Illinois. Faulkner challenged his convictions on sufficiency-of-the-evidence, withdrawal, hearsay and double-jeopardy grounds; Sykes challenged the substantive reasonableness of his above-Guidelines sentence.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed to determine whether any rational factfinder could have found the essential elements beyond a reasonable doubt, viewing the evidence in the light most favorable to the government; the court does not reweigh evidence or reassess credibility. Procedural sentencing errors are reviewed de novo, while substantive sentencing reasonableness is reviewed for abuse of discretion. A properly calculated within-Guidelines sentence is presumed reasonable, but a non-Guidelines sentence has no corresponding presumption of unreasonableness.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Joseph Faulkner, Otis Sykes v. United States of America

TOPICS

criminal procedure appellate procedure sentencing double jeopardy evidence

PRACTICE AREAS

criminal law criminal procedure federal sentencing appellate practice

QUESTIONS PRESENTED

1. Whether sufficient evidence supported Faulkner's convictions for RICO conspiracy and the offenses arising from the Carr shooting.
2. Whether Faulkner withdrew from the drug conspiracy upon his arrest and debriefing, and whether post-arrest co-conspirator statements were therefore inadmissible.
3. Whether Faulkner's second prosecution violated the Fifth Amendment's Double Jeopardy Clause.
4. Whether Sykes's eighteen-percent above-Guidelines sentence was procedurally or substantively unreasonable under 18 U.S.C. § 3553(a).

HOLDINGS

1. The evidence was sufficient to support Faulkner's conviction for RICO conspiracy because the government showed that another enterprise member committed predicate acts and that Faulkner knew of and agreed to facilitate the racketeering scheme; Faulkner himself did not need to commit two predicate acts.
2. The evidence was sufficient to support Faulkner's convictions because Ross's testimony, if credited, established that Faulkner ordered the shooting and acted because of or in furtherance of his gang membership.
3. The court declined to decide whether Faulkner withdrew from the conspiracy because withdrawal was irrelevant to the conviction absent a statute-of-limitations defense, and Faulkner showed no prejudice from the admission of post-arrest evidence.
4. Any error in admitting the recorded co-conspirator statements was harmless because Faulkner failed to show that the evidence affected the outcome or that the prosecution's case would have been significantly less persuasive without it.
5. Faulkner's double-jeopardy claim was foreclosed by the law of the case because the court's prior decision, *Faulkner I*, held that the prosecutions involved different offenses under *Blockburger* and Faulkner identified no exception warranting reconsideration.
6. Sykes's 195-month sentence was procedurally and substantively reasonable because the district court considered the § 3553(a) factors, adequately explained the upward variance, and based the sentence on legitimate case-specific considerations.

KEY QUOTATIONS

“we review a challenge to the sufficiency of the evidence ... to determine only whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, viewing the evidence in the light most favorable to the government.” (at 5)

“A withdrawal defense to a conspiracy charge is relevant only when ‘coupled with the defense of statute of limitations.’” (at 10)

“We presume that a sentence within a properly calculated Guidelines range is reasonable, but there is no corresponding presumption of unreasonableness for a non-Guidelines sentence.” (at 19)

FACTUAL BACKGROUND

Faulkner was a high-ranking member of the Double I's gang, which operated an open-air heroin market at the Keystone in Chicago, and was charged with RICO and drug-distribution conspiracies and offenses arising from the shooting of Tony Carr. The district court found that Faulkner participated in the drug-trafficking conspiracy, ordered the Carr shooting, and was responsible for distributing more than 1,000 grams of heroin. Sykes was a street-level dealer charged with conspiring to distribute drugs and with seven distribution counts; the district court found him responsible for less than 100 grams of heroin. At sentencing, the court also considered Sykes's extensive criminal history, continued drug dealing, knowledge of violence within the conspiracy, and participation in the uncharged murder of Andre Brown, which it accorded limited weight.

PROCEDURAL HISTORY

Faulkner and Sykes were indicted in 2013 for drug-trafficking offenses connected to the Double I's organization and were convicted after bench trials before Judge Elaine E. Bucklo. Faulkner had previously lost an interlocutory appeal challenging the 2013 prosecution on double-jeopardy grounds. Faulkner received 30-year, 3-year, and 10-year sentences on his convictions, and Sykes received a 195-month sentence, eighteen percent above his Guidelines range. Both defendants appealed, and the Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Webster, 775 F.3d 897, 904-05 (7th Cir. 2014)
- United States v. Wasson, 679 F.3d 938, 949 (7th Cir. 2012)
- United States v. Peterson, 823 F.3d 1113, 1120 (7th Cir. 2016)
- United States v. Pribble, 127 F.3d 583, 590 (7th Cir. 1997)
- United States v. Taylor, 637 F.3d 812, 815 (7th Cir. 2011)
- United States v. Garcia, 754 F.3d 460, 477 (7th Cir. 2014)
- Salinas v. United States, 522 U.S. 52, 66 (1997)
- United States v. Amaya, 828 F.3d 518, 531-32 (7th Cir. 2016)

- United States v. Fearn, 589 F.2d 1316, 1321 (7th Cir. 1978)
- United States v. DeSilva, 505 F.3d 711, 715 (7th Cir. 2007)
- United States v. Collins, 604 F.3d 481, 486 (7th Cir. 2010)
- Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 575 (1985)
- United States v. Cardona-Rivera, 904 F.2d 1149, 1152 (7th Cir. 1990)
- United States v. Farmer, 717 F.3d 559, 561-63 (7th Cir. 2013)
- United States v. Saunders, 973 F.2d 1354, 1359-60 (7th Cir. 1992)
- United States v. Nagelvoort, 856 F.3d 1117, 1128-29 (7th Cir. 2017)
- United States v. Nava-Salazar, 30 F.3d 788, 799 (7th Cir. 1994)
- United States v. Read, 658 F.2d 1225, 1233 (7th Cir. 1981)
- United States v. McHugh, 528 F.3d 538, 541 (7th Cir. 2008)
- United States v. Garcia-Avila, 737 F.3d 484, 490 (7th Cir. 2013)
- United States v. Faulkner, 793 F.3d 752, 755-58 (7th Cir. 2015)
- Witte v. United States, 515 U.S. 389, 399 (1995)
- Blockburger v. United States, 284 U.S. 299 (1932)
- White v. United States, 371 F.3d 900, 902 (7th Cir. 2004)
- United States v. Schiro, 679 F.3d 521, 527-28 (7th Cir. 2012)
- United States v. Calabrese, 490 F.3d 575, 580-81 (7th Cir. 2007)
- United States v. Gries, 877 F.3d 255, 259 (7th Cir. 2017)
- United States v. Alhalabi, 443 F.3d 605, 611 (7th Cir. 2006)
- United States v. Reyes-Hernandez, 624 F.3d 405, 409 (7th Cir. 2010)
- United States v. Rivera, 847 F.3d 847, 849 (7th Cir. 2017)
- United States v. Lewis, 842 F.3d 467, 477-78 (7th Cir. 2016)
- United States v. Castaldi, 743 F.3d 589, 597-98 (7th Cir. 2014)
- United States v. Boscarino, 437 F.3d 634, 638 (7th Cir. 2006)
- Ennin v. CNH Indus. Am., LLC, 878 F.3d 590, 595 (7th Cir. 2017)
- United States v. Smart, 603 F. App'x 500, 502 (7th Cir. 2015)
- United States v. Hayden, 775 F.3d 847, 849-51 (7th Cir. 2014)