

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-10373

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDREW THOMPSON,
a.k.a. Nico,
ALFONZO CHURCHWELL,
a.k.a. Boo Boo,
JORDAN RODRIGUEZ,
a.k.a. Big Man,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:18-cr-00205-WFJ-TGW-3

Before GRANT, LUCK, and HULL, Circuit Judges.

LUCK, Circuit Judge:

Jordan Rodriguez, Alfonzo Churchwell, and Andrew Thompson were members of a gang called “Third Shift” that sold drugs, robbed, fought with rival gangs, and murdered in furtherance of the gang’s operations. They were charged with a slew of crimes that the gang committed, convicted of most of them, and sentenced to life in prison. They now appeal their convictions, challenging the sufficiency of the evidence, an evidentiary ruling, the jury instructions, the district court’s response to a jury question, and comments the district court made about Rodriguez’s counsel’s strategic choices. After careful review, and with the benefit of oral argument, we affirm their convictions.

FACTUAL BACKGROUND¹

The Third Shift gang

The Third Shift gang was based in Oneco, a suburb of Bradenton, Florida. Rodriguez, Churchwell, and Thompson were members of Third Shift. Rodriguez and Thompson were childhood friends. Rodriguez's sister Maryha—who was also Thompson's ex-girlfriend—described the two as "best friends" and said Thompson was Rodriguez's "little do-boy," meaning Thompson "would always choose [Rodriguez], always, even with risking his family." Thompson's brother-in-law, Johnny Cintron; Cintron's friend, Phillip Uscanga; Uscanga's friend, Raymy; Rodriguez's brother, Jesse; and a man known as Macho were Third Shift members too.

Cintron testified to seeing Rodriguez "rep" Third Shift—"throwing up gang signs [and] stuff like that"—"and talk about being in the gang." Cintron said the gang's sign was "like an A-ok sign"; the gang also had a color (black), an "affiliated" or "friendly gang[]" (North Side), and a "rival gang[]" (South Side). Cintron saw Thompson "throw up the gang sign" and wear the gang's "flag" ("a black bandanna"). And he heard Macho sing a Third Shift song.

¹ "[W]e recount the facts . . . in the light most favorable to the government and draw all reasonable inferences in favor of the jury's verdict." *United States v. Martin*, 803 F.3d 581, 585 n.1 (11th Cir. 2015).

The trap house

Third Shift operated a “trap house”—a place where people “go[] to purchase drugs and use drugs on [the] premises”—on 11th Street East in Oneco. J.R., Churchwell’s “close” friend and a “big hitter” drug dealer in the Bradenton area, “opened” the trap house and “put[] his man [Rodriguez] in there” to “make some money.” Rodriguez lived there, paid rent and utilities, and was “in charge.” According to Cintron, Rodriguez ran the trap house from mid-2015 through late 2016 and had no other job.

During that time, Rodriguez, Cintron, Jesse, and other Third Shift members hung out at the trap house “[a]lmost every day.” Pole cameras (installed by local law enforcement in June 2016) captured Thompson at the trap house several times, and both Cintron and Thompson himself testified that Thompson was there about once a week. Cintron saw Churchwell at the trap house “[a] couple days,” and Cintron and Jesse’s friend, Quentin Couch, saw Churchwell there too.

The members of Third Shift sold drugs from the trap house. In fact, Stephanie Brewer—the trap house’s housekeeper—said buying and using drugs was “the main thing that went on in th[e trap] house.” Rodriguez’s neighbor testified to seeing “a lot of traffic” coming and going, and a lot of “[p]eople hanging out,” at the trap house. Pole camera footage similarly showed “lots of short-term traffic”—by car, bicycle, and foot—with people visiting the trap house “at all hours of the day and late into the night and the

early morning hours,” often for less than four minutes. A law enforcement search on September 11, 2016, revealed drug paraphernalia around and throughout the trap house—including a digital scale, syringes, glass pipes, a plastic pill bottle, plastic gloves, and plastic baggies—plus containers of cash. A later search turned up more syringes, as well as a duffle bag containing “a bunch of pill bottles” holding “numerous unidentified pills and also narcotics.”

J.R. would cook crack cocaine at the trap house a few times a week, after which Rodriguez would “break[the crack cocaine] down into small pieces,” “separating them and organizing them” on the kitchen table. Rodriguez kept drugs—crack and powder cocaine, marijuana, heroin, and pills, “[a]nything that you needed”—in a backpack in his bedroom and sold them from the trap house’s kitchen or living room multiple times a day. He sold to Cintron a few times a week and he twice enlisted Cintron to sell marijuana and crack cocaine on his behalf when Rodriguez was busy. Couch said he bought marijuana from Rodriguez at the trap house “[m]ore than probably like a hundred times,” and Maryha bought marijuana from Rodriguez too. Shazlynn Dunton (Thompson’s girlfriend) bought marijuana and cocaine from Rodriguez, and Brandi Simon admitted both to buying marijuana and crack cocaine from Rodriguez and to paying him to use a room at the trap house to take pills or shoot Dilaudid.

Pole camera footage from January 2017 showed Rodriguez dealing drugs out of a van parked in front of the trap house. When officers initiated a traffic stop of the van shortly after observing the

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