NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JOSE BALMORE ROMERO, AKA Porky, Defendant - Appellant.	No. 24-1702 D.C. No. 2:17-cr-00278-ODW-1 MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Argued and Submitted September 16, 2026
Pasadena, California

Before: R. NELSON and DESAI, Circuit Judges, and SCHREIER, District Judge.[**]

Defendant-Appellant Jose Romero appeals two issues from his jury trial and subsequent conviction on two counts: conspiracy to participate in a racketeering enterprise in violation of 18 U.S.C. § 1962(d) and conspiracy to distribute or to

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota, sitting by designation.

possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

1. Romero argues that the district court abdicated its gatekeeping obligations concerning expert testimony when it adopted the government's proposed order on Agent Call's qualifications and reliability without independently determining whether Agent Call's opinions were reliable before qualifying him as an expert. While the district court must make an explicit reliability finding on the record, *Daubert* hearings are not required: "The district court's gatekeeping can be performed through numerous procedures—such as motion in limine briefing and oral argument, voir dire, and cross-examination at trial." *United States v. Holguin*, 51 F.4th 841, 852–53 (9th Cir. 2022); *United States v. Alatorre*, 222 F.3d 1098, 1101–05 (9th Cir. 2000).

Agent Call possessed extensive law enforcement experience and a history of casework concerning MS-13, which formed a "reliable basis for [his] expert testimony regarding gang structure and activities." *Holguin*, 51 F.4th at 856. The expert issues were disclosed, briefed, and argued at a pre-trial conference. *See id.* at 853 ("[I]t will often be beneficial for district courts to conduct some proceeding, focused on the reliability of expert testimony . . . ."). The district court then made an explicit reliability finding on the record when it adopted the government's proposed order. Moreover, Agent Call's testimony was not "inherently unreliable,"

and Romero had "the opportunity to rebut and cross-examine." *Id.* at 869 n.1 (Berzon, J., concurring in part) (quoting *United States v. Reed*, 575 F.3d 900, 923 & n.17 (9th Cir. 2009)). Therefore, the district court did not abuse its discretion in admitting Agent Call's expert testimony.

Romero further contends that the order was conclusory and that, by adopting the government's proposed order and reading it to the jury, the district court impermissibly vouched for Agent Call. *See United States v. Ruiz*, 710 F.3d 1077, 1085 (9th Cir. 2013). While the district court should have made its reliability finding outside the jury's presence, any potential error was harmless because the record supports the reliability of Agent Call's testimony and the district court twice instructed the jurors on their ability to accept or reject the witness's testimony—both before Agent Call testified on direct, and before his cross-examination. *See Holguin*, 51 F.4th at 855–57; *Zafiro v. United States*, 506 U.S. 534, 540–41 (1993) (juries are presumed to follow instructions).

2. Romero next argues that the district court plainly erred by calculating the amount of drugs distributed by his co-conspirator, Melgar, and by attributing that amount of drugs to Romero when calculating Romero's offense level under the Sentencing Guidelines. Because Romero did not object to the amount of drugs attributed to him at sentencing, his claims are reviewed for plain error. *United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009).

As the government established, the drugs trafficked by Melgar were also reasonably foreseeable to Romero. The government elicited testimony at trial that making money is a primary goal of the MS-13 enterprise, that its revenue is generated predominately through narcotics trafficking, and that Romero occupied a leadership role in MS-13. The government also demonstrated that, despite being composed of different cliques, MS-13 operated in a coordinated fashion through general meetings of clique leaders and pooled profits from narcotics trafficking. Both Romero and Melgar were convicted beyond a reasonable doubt of conspiracy to distribute or to possess with intent to distribute methamphetamine, and Melgar was also convicted of actual distribution of methamphetamine. A witness testified that he collected rent from Melgar multiple times and delivered it to Romero, further linking Melgar to Romero.

And the jury found that Romero knew the racketeering conspiracy would involve drug trafficking, and that it was reasonably foreseeable that the conspiracy would involve methamphetamine. *See United States v. Perez*, 962 F.3d 420, 448–49 (9th Cir. 2020). The district court therefore had sufficient grounds to conclude that methamphetamine distribution was within the scope of Romero and Melgar's "jointly undertaken criminal activity." U.S. Sent'g Guidelines Manual §§ 1B1.3(a)(1)(B)(i), 1B1.3 cmt. n.4(C)(vi) (U.S. Sent'g Comm'n 2025).

The district court's approximation of the quantity of methamphetamine

contributing to Romero's offense level was proper because the estimate was supported by a preponderance of the evidence, the supporting information possessed "sufficient indicia of reliability," and the numbers used in the calculation were conservative. *United States v. Culps*, 300 F.3d 1069, 1076 (9th Cir. 2002). To calculate the drug quantity under the guidelines, the district court used the established multiplier method and leveraged a credible witness's testimony about the amount of methamphetamine Melgar had provided to the witness each week over an estimated period of sixteen weeks. *Id.* This estimate was conservative and within the range of time supplied by the witness. Therefore, the district court did not plainly err in calculating Romero's offense level.

AFFIRMED.