NOT FOR PUBLICATION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. KIMBER BRUNFMAN, Defendant - Appellant.	No. 25-1343 D.C. No. 2:23-cr-00185-MCS-1 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Mark C. Scarsi, District Judge, Presiding

Submitted October 27, 2026**

Before: SILVERMAN, FORREST, and VANDYKE, Circuit Judges.

Kimber Brunfman appeals from the district court's judgment and challenges the 240-month sentence and several conditions of supervised release imposed upon his guilty-plea conviction for possession with intent to distribute fentanyl in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction under 28 U.S.C. § 1291,

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and we affirm in part, vacate in part, and remand.

Brunfman contends the district court procedurally erred by (1) relying on clearly erroneous facts; (2) failing to consider his mitigating arguments and the 18 U.S.C. § 3553(a) factors; and (3) failing to explain adequately the upward variance from the Guidelines range. Because Brunfman did not raise these claims in the district court, we review for plain error. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). The district court did not plainly err. The court relied on uncontested facts contained in the presentence report and reasonable inferences from those facts. *See United States v. Ameline*, 409 F.3d 1073, 1085 (9th Cir. 2005) (en banc) ("[T]he district court may rely on undisputed statements in the PSR at sentencing."). Moreover, it considered Brunfman's arguments and the § 3553(a) factors and sufficiently explained its reasons for the upward variance, including Brunfman's awareness of the danger of the drugs he sold. *See United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008) (en banc).

Brunfman also contends the above-Guideline sentence is substantively unreasonable because the district court overemphasized Brunfman's prior drug experiences, Brunfman's suspicion that the drugs he provided the victim contained fentanyl, and Brunfman's possession of fentanyl at the time of his arrest. However, "[t]he weight to be given the various factors in a particular case is for the discretion of the district court." *United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th

Cir. 2009). The district court did not abuse its discretion in imposing the above-Guidelines sentence, which is substantively reasonable under the § 3553(a) factors and the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Lastly, Brunfman contends and the government concedes that the district court erred by failing to pronounce orally each discretionary condition of supervised release. We agree. We therefore vacate special supervised release conditions six through eleven in the written judgment, and remand for the limited purpose of permitting the court to pronounce orally any conditions it wishes to reimpose and give Brunfman an opportunity to object. *See United States v. Montoya*, 82 F.4th 640, 656 (9th Cir. 2023) (en banc).

AFFIRMED IN PART, VACATED IN PART, and REMANDED.