

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4526

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHAMMOHD JAMEIL BALLAH,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:20-cr-00070-WO-1)

Submitted: May 10, 2022

Decided: July 5, 2022

Before GREGORY, Chief Judge, and RUSHING and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Eugene E. Lester, III, SHARPLESS MCCLEARN LESTER DUFFY, PA, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, Acting United States Attorney, Margaret M. Reece, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Winston-Salem, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Shammohd Jameil Ballah pled guilty, pursuant to a plea agreement, to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 924(a)(2), 922(g)(1), and the district court sentenced Ballah to 108 months' imprisonment. On appeal, Ballah challenges the district court's application of the four-level enhancement under U.S. Sentencing Guidelines Manual § 2K2.1(b)(6)(B) (2018) for using or possessing a firearm in connection with another felony offense. We affirm.

“We review criminal sentences for reasonableness using an abuse of discretion standard. A sentence based on an improperly calculated [Sentencing] Guidelines range is procedurally unreasonable.” *United States v. Shephard*, 892 F.3d 666, 670 (4th Cir. 2018) (citation omitted). “In assessing whether a district court properly calculated the Guidelines range, including its application of any sentencing enhancements, [we] review[] the district court's legal conclusions de novo and its factual findings for clear error.” *United States v. Pena*, 952 F.3d 503, 512 (4th Cir. 2020) (internal quotation marks omitted). “[C]lear error exists only when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. Slager*, 912 F.3d 224, 233 (4th Cir. 2019) (internal quotation marks omitted).

Section 2K2.1(b)(6)(B) prescribes a four-level enhancement “[i]f the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense.” USSG § 2K2.1(b)(6)(B). “The purpose of this enhancement is to ensure that a defendant receives more severe punishment if, in addition to committing a firearms offense within the scope of § 2K2.1, he commits a separate felony offense that is rendered more dangerous

by the presence of a firearm.” *United States v. McDonald*, 28 F.4th 553, 569 (4th Cir. 2022) (cleaned up). “At sentencing, the Government had to show by a preponderance of the evidence that the [§ 2K2.1(b)(6)(B)] enhancement applied.” *United States v. Arbaugh*, 951 F.3d 167, 173 (4th Cir. 2020).

We conclude that the district court did not clearly err in finding that the Government met its burden of establishing by a preponderance of the evidence that Ballah participated in a drive-by shooting with the firearm alleged in the indictment. The court credited the testimony of an eyewitness who saw one car shooting from the passenger’s side (Ballah’s side) of the vehicle because that testimony matched the forensic evidence. In contrast, the court discredited the testimony of Ballah’s driver and bodyguard because of his inability to recall several relevant details and because there was no forensic evidence supporting his version of events. The court also discredited Ballah’s proclamations of innocence on the jail phone calls because Ballah had provided multiple false statements to the officers prior to the calls. Ballah’s argument that the court’s factual findings do not match the evidence presented at the sentencing hearing is without merit.

Accordingly, we affirm the district court’s judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED