

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10401
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHERRON WALTER GARY,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:23-cr-00278-TPB-NHA-1

Before JORDAN, LUCK, and KIDD, Circuit Judges.

PER CURIAM:

Sherron Gary was convicted of possessing a firearm as a felon and sentenced to eighty-four months' imprisonment. He appeals his sentence, arguing that the district court erred by applying

a reckless-endangerment enhancement. After careful review, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Gary was driving in Tampa, Florida, late one night when police attempted to stop his car for a broken taillight. Gary fled. For about ten minutes, Gary attempted to lose the police by driving through residential neighborhoods at high speed. Along the way, he ran several stop signs and went the wrong direction on a one-way road, although he avoided hitting any cars or pedestrians. Eventually, the police trapped Gary's car in a parking lot, so he got out and continued his flight on foot. While running, Gary tossed a loaded semiautomatic handgun on the ground in a residential backyard. The police arrested Gary less than a minute after he left his car, and they recovered the gun about two minutes later.

The government charged Gary with possessing a firearm as a convicted felon. *See* 18 U.S.C. § 922(g)(1). Gary pleaded guilty. The United States Probation Office produced a presentence report. The report assigned Gary a criminal history category of IV and applied a two-level enhancement to Gary's offense level for "obstruction of justice" because Gary "recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer" for a total offense level of twenty-three, resulting in a guideline range of seventy to eighty-seven months' imprisonment.

Gary objected. The enhancement did not apply, he contended, because he "did not drive particularly fast," made "carefully

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controlled turns,” “stopped at some intersections,” and never came close to hitting anyone with his car. Additionally, he explained, when the police trapped his car, he didn’t ram them or try to drive away, and when they caught up with him on foot, he didn’t resist arrest but surrendered himself instead.

At the sentencing hearing, Gary continued to press his objection to the reckless-endangerment enhancement. The government played a surveillance video of Gary’s flight captured by a police helicopter. The district court observed that the video showed Gary driving slowly at the beginning, but eventually “getting kind of fast,” driving “on the wrong side of the road” and throwing the gun on the ground while fleeing the police on foot. The district court overruled Gary’s objection, concluding that “the video [was] dispositive” of the sentence-enhancement issue and “[b]ased on what [it] saw in the video,” Gary “qualifie[d] for the enhancement.” The district court sentenced Gary to eighty-four months’ imprisonment. Gary appeals his sentence, contending that the district court erred by calculating his guideline range based on the reckless-endangerment enhancement.

STANDARD OF REVIEW

“[We] review[] factual findings for clear error and the application of the United States Sentencing Guidelines to those facts de novo.” *United States v. Washington*, 434 F.3d 1265, 1267 (11th Cir. 2006) (citation modified). A district court’s determination that a defendant recklessly endangered another person is a finding of fact reviewed for clear error. See *United States v. Gonzalez*, 71 F.3d 819,

837 (11th Cir. 1996), *abrogated on other grounds by Davis v. United States*, 564 U.S. 229 (2011).

DISCUSSION

On appeal, Gary argues that the district court erred by applying the reckless-endangerment enhancement to his sentence because the government did not prove that Gary's actions recklessly endangered anyone. Gary admits that he fled from law enforcement officers through a residential area at a high speed and that he discarded a loaded handgun in the residential area as he fled on foot, but he contends that those facts alone are insufficient to support the sentence enhancement.

The guidelines call for a two-level increase to the defendant's offense level if he "recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer." U.S.S.G. § 3C1.2. "[F]light alone is insufficient to warrant an enhancement" under section 3C1.2. *United States v. Wilson*, 392 F.3d 1243, 1247 (11th Cir. 2004). But "conduct that could potentially harm a police officer or a third party is sufficiently reckless." *United States v. Matchett*, 802 F.3d 1185, 1198 (11th Cir. 2015). No actual injury need occur for the reckless-endangerment enhancement to apply. *See id.*

Here, Gary did two things that we've recognized as justifying the reckless-endangerment enhancement. First, Gary recklessly endangered others by driving his vehicle irresponsibly in a residential neighborhood while fleeing police. "Driving a car at

high speed in an area where people are likely to be found”—for example, a residential neighborhood—“constitutes reckless disregard for others’ safety.” *Washington*, 434 F.3d at 1268 (citing *Gonzalez*, 71 F.3d at 836–37); *Gonzalez*, 71 F.3d at 836–37 (applying enhancement where defendant “operated his vehicle, in reverse, at a high rate of speed on a residential street” while fleeing police). In *Washington*, the defendant drove at high speeds to evade police, eventually driving into a residential parking deck attached to a condominium complex and slipping under a security gate as it was closing. See 434 F.3d at 1266. Although he didn’t hit anybody, we still upheld the enhancement because he endangered others by driving too fast in an area where others were likely to be found. *Id.* at 1267–68.

Like the *Washington* defendant, Gary drove at a high rate of speed in a residential area where people were likely to be found, recklessly creating a substantial risk to others. *Id.* Moreover, as Gary concedes, he committed numerous traffic violations during his flight, including speeding, running several stop signs, and driving the wrong way on a one-way street. These violations are further evidence that Gary recklessly created a substantial risk of death or serious bodily injury while fleeing from law enforcement officers.

Gary nevertheless insists that he did not recklessly endanger anyone because “flight alone is insufficient” to support the enhancement. *Wilson*, 392 F.3d at 1247. But, as we explained, Gary did more than just flee the police. He led them on a high-speed chase through a residential neighborhood, violating several traffic

laws in the process. The district court did not clearly err by concluding that this conduct created a substantial risk of serious harm to others. *See Washington*, 434 F.3d at 1267–68; *Gonzalez*, 71 F.3d at 836–37

Gary also contends that the district court did not have sufficient evidence to properly apply the reckless-endangerment enhancement because the helicopter video was not admitted into evidence. But a court may consider any information at a sentence hearing that is sufficiently reliable regardless of its admissibility into evidence. *See* U.S.S.G. § 6A1.3(a) (“[T]he court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.”). We’ve found that a video of a defendant’s reckless actions is sufficient evidence for a district court to determine that the reckless-endangerment sentence enhancement applies. *See Washington*, 434 F.3d at 1265, 1268. And Gary never contended that the video was inaccurate or altered in any way.

In the alternative, Gary argues that we should remand for the district court to make more specific findings supporting the reckless-endangerment enhancement. Gary asserts that the district court did not make particularized findings when the helicopter video was shown at the sentence hearing because it stated only that “the video [wa]s dispositive” and that “[b]ased on” the video, Gary “qualifie[d] for the enhancement.” That’s wrong because the district court did make specific findings based on the video that Gary’s

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driving was “getting kind of fast” in an “obviously residential area” and on “the wrong side of the road,” and these findings were sufficient to support the application of the reckless-endangerment enhancement. But even if it hadn’t made these findings, we’ve said that “a sentencing court’s failure to make individualized findings regarding the scope of the defendant’s activity is not grounds for vacating a sentence if the record support[s] the court’s determination with respect to the offense conduct.” *United States v. Petrie*, 302 F.3d 1280, 1290 (11th Cir. 2002)); *see also United States v. Baldwin*, 774 F.3d 711, 727 (11th Cir. 2014) (“If the record otherwise supports the court’s determination, a failure to make specific findings will not require vacating the sentence.”).

Here, the video itself shows Gary driving in an unsafe manner at dangerous speeds through a residential neighborhood, then running from the police with a loaded firearm before throwing the firearm on the ground. Because the record supports the district court’s conclusion that Gary created a substantial risk to others while fleeing from the police, the district court did not clearly err by enhancing his sentence under section 3C1.2.

AFFIRMED.