

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12014
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDDIE LEE FLOURNAH, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 7:23-cr-00083-WLS-ALS-1

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D.C. Docket No. 7:23-cr-00083-WLS-ALS-1

Before JORDAN, KIDD, and ED CARNES, Circuit Judges.

PER CURIAM:

Eddie Flournah, Jr. raises two challenges to his 127-month sentence for possessing a firearm as a convicted felon. He contends that a four-level enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for “us[ing] or possess[ing] any firearm or ammunition in connection with another felony offense” should not apply to him. He doesn’t deny that at the same time he possessed a firearm as a convicted felon, he also possessed narcotics with the intent to sell them. He argues, however, that keeping the loaded firearm in the waistband of his pants wasn’t “in connection” with that felony drug offense.

He also challenges the application of a four-level enhancement under U.S.S.G. § 2K2.1(b)(4)(B)(i) for possessing a firearm with an altered or obliterated serial number. He contends, and the

25-12014

Opinion of the Court

3

government agrees, that the enhancement should not apply because the serial number was scratched but legible.¹

I.

We review the procedural reasonableness of Flournah’s sentence for an abuse of discretion. *See United States v. Gomez*, 955 F.3d 1250, 1255 (11th Cir. 2020). We review *de novo* the district court’s legal interpretation of the guidelines and its application of the guidelines to the facts. *United States v. Hernandez*, 167 F.4th 1113, 1123 (11th Cir. 2026). But we review only for clear error the fact-finders underpinning the guidelines calculation. *Id.*

A four-level enhancement applies when the government shows that a defendant “used or possessed any firearm or ammunition in connection with another felony offense.” § 2K2.1(b)(6)(B) (2024). And the district court’s determination that he did is a fact-finding that we review only for clear error. *United States v. James*, 135 F.4th 1329, 1332 (11th Cir. 2025) (quotation marks omitted).

The ways for the government to meet the “in connection with” requirement are “expansive.” *United States v. Irons*, 176 F.4th 1275, 1283–84 (11th Cir. 2026) (quoting *United States v. James*, 135 F.4th 1329, 1335 (11th Cir. 2025)). Those ways include showing

¹ Flournah also challenges his conviction for possessing a firearm as a felon, contending that 18 U.S.C. § 922(g)(1) violates the Second Amendment both facially and as applied to him. Our binding precedent forecloses that contention. *See United States v. Carter*, 180 F.4th 1285, 1287 n.1 (11th Cir. 2026); *United States v. Hicks*, 166 F.4th 933, 939 (11th Cir. 2026); *United States v. Dubois*, 139 F.4th 887, 893–94 (11th Cir. 2025).

“that the firearm ‘potentially emboldened’ the defendant to commit the offense, the defendant ‘could have used the firearm’ to complete the offense, or the firearm was ‘available for use as a weapon’ if law enforcement ‘attempted to thwart’ the offense.” *Id.* at 1284 (quoting *United States v. Brooks*, 112 F.4th 937, 949-51 (11th Cir. 2024)) (alteration omitted). When a firearm “has the potential of facilitating” another offense, it is possessed in connection with that other offense, even if it is not actually used. *See id.* at 1283 (quotation marks omitted); *see also United States v. Carillo-Ayala*, 713 F.3d 82, 94 (11th Cir. 2013) (explaining that evidence showing that “the defendant *could have* used the firearm to protect his criminal activity” is enough to “support a connection between the firearm and the offense”).

Flournah does not challenge the district court’s finding that he committed “another felony offense,” which was possessing narcotics with the intent to distribute them. The sole issue is whether Flournah possessed the firearm “in connection with” that felony drug offense. The district court found that Flournah possessed a firearm that “could be used and was likely to be used in the [drug] offense.”

The record establishes that Flournah had a loaded pistol in the waistband of his pants and an extra magazine in his pocket. He was carrying on his person a firearm and 34 rounds of ammunition. *See United States v. Bishop*, 940 F.3d 1242, 1253 (11th Cir. 2019) (explaining that “whether the firearm is loaded and possessed with drugs in public” is relevant to assessing its potential to facilitate a

25-12014

Opinion of the Court

5

drug crime). Flournah was carrying the pistol where he could have immediate access to it, along with an extra magazine of ammunition if needed, to protect his nearby drug supply or to facilitate his offense of possessing drugs with the intent to distribute them. *See Irons*, 176 F.4th 1275, 1283–84; *Carillo-Ayala*, 713 F.3d at 94; *see also James*, 135 F.4th at 1334 (explaining that “the touchstone of each of our cases interpreting what it means to use or possess a firearm ‘in connection with’ another offense has always been the firearm’s potential to facilitate the other offense”). And the government presented testimony from an officer that, in his experience, drug distributors commonly carry firearms to guard their stash from robbery. The district court did not clearly err in finding that Flournah possessed the pistol in his waistband in connection with his offense of possession of drugs with the intent to distribute them. The § 2K2.1(b)(6)(B) enhancement was properly applied.

II.

Flournah also contends that the district court erred by applying a four-level enhancement under U.S.S.G. § 2K2.1(b)(4)(B)(i) for possessing a firearm with an altered or obliterated serial number.

An earlier version of U.S.S.G. § 2K2.1(b)(4)(B)(i) provided that a four-level enhancement applied if “any firearm had an altered or obliterated serial number.” § 2K2.1(b)(4)(B)(i) (2023). But in 2024, before Flournah’s sentencing, the U.S. Sentencing Commission amended § 2K2.1(b)(4)(B)(i) to state that the enhancement applies if “any firearm ha[s] a serial number that was modified such

that the original information is rendered illegible or unrecognizable to the unaided eye.” § 2K2.1(b)(4)(B)(i) (2024). At the time of Flournah’s sentencing, the enhancement required proof that the serial number was altered to the point that it could not be read with the naked eye. *See id.*

Flournah contends, and the government agrees, that the necessary proof wasn’t provided at the sentence hearing. As a result, it was clearly erroneous to apply the § 2K2.1(b)(4)(B)(i) enhancement.

Instead of proffering the firearm as evidence, the government proffered a photograph of it, which appeared to show that part of the serial number on the firearm was illegible. But the record establishes, and the government admits, that the officer who seized the firearm was able to read the complete serial number on it and verify that number with an ATF trace report. And, as the government admits, “composition, angle of view, pixilation, light refraction, lens aberration” and other aspects of a photographic image “may omit critical visual detail” making “a serial number that is legible on a gun illegible when photographically reproduced.”

It was the government’s burden to show that the enhancement applied. *See United States v. Perez-Oliveros*, 479 F.3d 779, 783 (11th Cir. 2007) (“The burden of establishing evidence of the facts necessary to support a sentencing enhancement falls on the government, and it must do so by a preponderance of the evidence.”). And the government didn’t meet that burden. It failed to show that the serial number was “illegible or unrecognizable to the unaided

25-12014

Opinion of the Court

7

eye.” § 2K2.1(b)(4)(B)(i) (2024). That means it was clearly erroneous to apply the § 2K2.1(b)(4)(B)(i) enhancement. We vacate the sentence and remand for resentencing without it.

**AFFIRMED IN PART AND VACATED AND
REMANDED IN PART.**