

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12730
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT JOSEPH ROBUSTO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:21-cr-00115-SPC-NPM-1

Before JORDAN, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Vincent Robusto appeals his 405-month sentence for knowingly transporting a minor with the intent that she engage in criminal sexual activity, 18 U.S.C. §§ 2423(a), 2423(e), and possessing a firearm as a convicted felon, 18 U.S.C. §§ 922(g)(1), 924(a)(2).

On appeal, Robusto argues that the district court improperly gave him 6 criminal-history points because he was released from the sentences for 2 prior convictions on June 16, 2006, more than 15 years prior to his claimed commencement date of the instant offenses in July 2021. The government argues that Robusto invited this error because, at sentencing, he had argued that the criminal-history points should not be counted because he was not released from those sentences within 15 years of his July 21, 2021, arrest date, but had acknowledged the government's position that the trial evidence showed that the current criminal activity began as far back as February 2021.

For the reasons discussed below, we conclude that although Robusto did not invite the claimed error, the district court did not err in finding that his relevant conduct began in February 2021 and thus affirm.

I. FACTUAL AND PROCEDURAL HISTORY

A. *Offense Conduct and Trial*

A grand jury indicted Robusto with transporting Z.R., a minor, from Texas to Florida between about July 17 and July 23, 2021, with the intent that she engage in sexual activity chargeable as lewd or lascivious battery under Fla. Stat. § 800.04(4)(a)–(b), and with possessing a firearm as a felon.

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At trial, the government introduced a series of Snapchat conversations between Robusto and Z.R., the earliest of which was from February 11, 2021, when Z.R. was 14 years old. That day, Robusto told Z.R. that he wished she were there with him that weekend, offered to “buy [her] a plane ticket,” remarked that a bus would take “too long,” and asked whether she could drive or whether he could pick her up. When Z.R. said it was too far, Robusto replied that “[n]othing is too far” and that he wanted to meet her “so [they could] legitimize [their] relationship.” Z.R. also told Robusto that she was in tenth grade; he responded that he did not care.

In subsequent conversations between February 22 and March 3, 2021, Robusto told Z.R. that he loved her, called her his “future wifey,” urged her to “[c]ome here already,” and sent sexually explicit messages describing sexual acts he wished to perform with her. On July 10, he told Z.R. that she was “all [his].” Two days later, Z.R. told Robusto that she was flying from San Antonio, and he coached her through the airport. Z.R. testified that Robusto told her to delete everything from her phone when law enforcement arrived and that she did not remember whether she had contact with him between March and July 2021.

Robusto testified that he knew Z.R.’s age, had been having sexual conversations with her since at least February 2021, and had arranged for her to come to Florida, but he denied intending that

she engage in unlawful sexual activity. He described the government's exhibits as "cherry picked messages" that were "not full conversations."

The jury convicted Robusto on both counts.

B. Sentencing

The presentence investigation report ("PSI") assigned three criminal-history points under the 2024 United States Sentencing Guidelines Manual ("Guidelines") Section 4A1.1(a) for each of two sets of 2001 Georgia convictions, for which Robusto was released from custody on June 16, 2006. Those six points placed him in criminal-history category III. With a total offense level of 39, that category yielded a guideline range of 324 to 405 months' imprisonment.

Robusto filed no written objections to the PSI. At sentencing, however, his counsel stated:

I had questioned whether those convictions were too remote in time . . . since the release date of June 16th of 2006 exceeded the 15 years between that date and the arrest date in this case, which was July 21st. . . . What was brought to my attention is that under 4A1.1(a), the felonies were counted if . . . he's released from prison within 15 years of the commencement of the criminal activity, which in this case, as the evidence showed at trial, actually began as far back as February of 2021, which would put it within the 15-year period. So[,] we're going to object on that basis

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just to make sure our record is covered . . . , but that was the explanation that we received.

The government then pointed to the February 11 conversation about the plane ticket, and the district court overruled the objection, finding “that probation did accurately calculate the additional three points based upon bringing that in from the commencement of this particular offense.” The district court sentenced Robusto to 405 months’ imprisonment, followed by lifetime supervised release. This appeal followed.

II. STANDARD OF REVIEW

We review the district court’s interpretation of the Guidelines *de novo* and its factual findings for clear error. *See United States v. Monzo*, 852 F.3d 1343, 1348 (11th Cir. 2017). A finding is clearly erroneous only if we are “left with a definite and firm conviction that a mistake has been committed,” *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010) (quotation omitted), but the finding must be “supported by substantial evidence,” *United States v. Cobb*, 842 F.3d 1213, 1218 (11th Cir. 2016) (quotation omitted).

Arguments raised for the first time on appeal are reviewed for plain error, which exists

where (1) there is an error in the district court’s determination; (2) the error is plain or obvious; (3) the error affects the defendant’s substantial rights in that it was prejudicial and not harmless; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings.

United States v. Clark, 274 F.3d 1325, 1326 (11th Cir. 2001). We do not review invited error at all. See *United States v. Love*, 449 F.3d 1154, 1157 (11th Cir. 2006).

III. DISCUSSION

A. *Invited Error*

The government first contends that Robusto invited error. A defendant invites the district court to err when a defendant's statements or actions induce the district court into making the error, including when the defendant "expressly acknowledge[s]" that the court may take a challenged action or the defendant requests it. *Love*, 449 F.3d at 1157. The "invited error doctrine," however, "is not triggered by ambiguous statements or representations." *United States v. Hayes*, 762 F.3d 1300, 1310 n.6 (11th Cir. 2014) (citation omitted).

Here, the government relies on defense counsel's statement that the criminal activity "actually began as far back as February of 2021." That statement, however, is ambiguous when read in context. Defense counsel described the point as one "brought to [his] attention," said he would "object on that basis just to make sure [his] record is covered," and closed by noting it "was the explanation that [he] received." It is unclear whether defense counsel was conceding the commencement date or merely reciting the government's position before objecting. Because Robusto's statement at sentencing about the government's position regarding the commencement date of the offense at issue was ambiguous, it cannot constitute invited error. Additionally, unlike the defendant in *Love*,

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Robusto did not request the action he now challenges. We thus conclude that the invited-error doctrine does not apply. *See Hayes*, 762 F.3d at 1310 n.6.

B. Preservation

The parties also dispute whether Robusto preserved his argument. At sentencing, Robusto contended that the 15-year period should be measured from the date of his arrest. On appeal, however, he accepts that it runs from the commencement of the offense instead, but he argues that the offense commenced in July and not February of 2021. An objection that is “substantively different” from the argument raised on appeal does not preserve that argument, *United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014), but “while an issue can be waived, alternative arguments on an issue cannot,” *United States v. Horn*, 129 F.4th 1275, 1298 (11th Cir. 2025). Accordingly, as long as a party makes the same “request” on appeal, it can present new arguments in favor of the reasoning it advanced at sentencing without waiving the issue. *Id.* at 1296–98.

The record here could support either conclusion. On one hand, Robusto’s appellate argument abandons the legal theory he pressed below and instead disputes a factual premise that he did not contest at sentencing: the February 2021 commencement date. *See Ramirez-Flores*, 743 F.3d at 821. On the other hand, both arguments seek the same relief, which is exclusion of the Georgia convictions as too remote; the district court also heard evidence and made a

finding on the very question Robusto now raises. *See Horn*, 129 F.4th at 1298.

However, we need not decide this question or which standard governs because Robusto’s claim fails even under clear-error review, and without error, there can be no plain error. *See Clark*, 274 F.3d at 1326.

C. Commencement of the Instant Offense

A prior sentence of imprisonment exceeding one year and one month counts toward a defendant’s criminal-history score if it was imposed within or resulted in incarceration during any of the 15 years before “the defendant’s commencement of the instant offense,” U.S.S.G. § 4A1.2(e)(1), which “includes any relevant conduct,” *id.* § 4A1.2, comment. (n.8).¹ Relevant conduct includes the defendant’s acts “that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.” *Id.* § 1B1.3(a)(1). We therefore use the date on which the defendant’s relevant conduct began. If an offense took place over time, the sentencing court may determine the date “based on the evidence adduced at trial.” *United States v. Cornog*, 945 F.2d 1504, 1509 (11th Cir. 1991).

¹ We defer to the commentary only when a guideline is genuinely ambiguous, *United States v. Dupree*, 57 F.4th 1269, 1275–78 (11th Cir. 2023) (en banc), but we may rely on it where, as here, “[n]o party contest[s] the commentary’s validity . . . or the propriety of its interpretation of [the guideline’s] text,” *United States v. Jews*, 74 F.4th 1325, 1327–28 & n.2 (11th Cir. 2023).

Robusto was released on June 16, 2006, so his Georgia sentences count only if the instant offense commenced before June 16, 2021.² The district court found that the offense began with Robusto’s February 2021 communications with Z.R. Substantial evidence supports that finding.

Robusto sought to bring Z.R. to him, as evidenced by his first recorded exchange with her. On February 11, 2021, the same day Z.R. told Robusto that she was in tenth grade, he said he wished she were with him, offered to buy her a plane ticket, weighed travel by bus or car, and told her nothing was too far because he wanted to meet her. Over the following weeks, he professed his love, called her his future wife, and urged her to “[c]ome here already,” sending sexually explicit messages that described sexual acts of the kind the jury found he intended when he later transported her. The district court permissibly found that these communications were acts “in preparation for” the offense, as they cultivated the relationship and trust that led a minor to travel across state lines to meet Robusto, and they show his objective from the outset was to have her come to him for sex. *See* U.S.S.G. § 1B1.3(a)(1).

² The government argues, alternatively, that the firearm offense commenced by January 9, 2021, which is when Robusto was recorded holding the firearm. We need not reach that argument. Robusto also does not argue that each count must have independently commenced within the 15-year period, so he has abandoned any such argument. *See United States v. Campbell*, 26 F.4th 860, 871–73 (11th Cir. 2022) (en banc).

Robusto's arguments to the contrary fail. First, he characterizes his February messages as "passing comments" made in jest. The district court was not required to accept that view, however, and the record points the other way, as Z.R. did ultimately travel to Florida to meet him and the jury rejected his testimony that he lacked the requisite intent. Where the evidence supports two permissible views, "the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985).

Second, Robusto notes that his February and March messages did not propose dates or logistics, but nothing in Section 1B1.3 limits preparatory conduct to the logistics of the eventual trip. Cultivating a minor's willingness to travel to meet the defendant is preparation for transporting her with the intent to engage in sexual activity. In any event, the February 11 messages addressed how Z.R. might get to Robusto.

Third, Robusto contends that a gap in communication between March and July 2021 renders the earlier messages too attenuated, but the record does not establish such a gap. Z.R. testified only that she did not remember whether they were in contact, and Robusto also told her to delete the contents of her phone when law enforcement arrived. Even assuming a pause, though, the district court could reasonably find that Z.R.'s July travel was the culmination of the plan Robusto began pursuing in February.

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The district court thus did not err in finding that Robusto’s offense commenced in February 2021—within 15 years of his release—or in assigning six criminal-history points for the Georgia convictions under Section 4A1.2(e)(1).

IV. CONCLUSION

For the foregoing reasons, we affirm Robusto’s sentence.

AFFIRMED.