

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13004
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM CHARLES FRANKLIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:24-cr-00067-MTT-CHW-1

Before NEWSOM, BRASHER, and WILSON, Circuit Judges.

PER CURIAM:

In June 2024, Defendant-Appellant William Franklin, a white man, was driving his tractor down a rural road in Washington County, Georgia, when he came upon Devon Wilson, a United

States Postal Service (USPS) rural mail carrier and a Black man. The road itself was too narrow to allow the two vehicles to pass. Both vehicles stopped, and a conflict ensued. When Wilson refused to back his vehicle down, citing official USPS policy, Franklin became enraged and yelled racially offensive and profane threats, including threats of bodily injury. Wilson's report of the incident resulted in a federal investigation (June Incident).

Then, in December 2024, Wilson and Franklin met again on another rural road. Wilson was driving a tractor with an attachment on the side known as a harrow.¹ This time, neither vehicle stopped and as Franklin passed Wilson, the harrow hit the back side of the USPS vehicle, causing damage. Another report and federal investigation followed (December Incident). After a three-day trial, a jury convicted Franklin of obstructing the mails, assault upon a federal officer, aggravated assault upon a federal officer, and retaliating against a witness.

On appeal, Franklin challenges his conviction and sentence. He argues that the evidence was insufficient to convict him of the assault, aggravated assault, and retaliation counts, and to support the jury's finding that he committed those offenses against the victim because of his race. He also argues that his 66-month sentence was procedurally and substantively unreasonable. He maintains that the district court improperly applied an eight-level enhancement under U.S.S.G. § 2J1.2(b)(1)(B) in calculating his advisory

¹ The harrow is an implement attached to the back of the tractor used as a smoothing plow.

25-13004

Opinion of the Court

3

range. He also argues that the district court overlooked key mitigating evidence, including his character reference letters and a report from a forensic psychiatrist. After careful review, we affirm.

I.

First, Franklin argues that the government produced insufficient evidence for a reasonable jury to find him guilty of forcible assault of a federal officer for the June Incident. We review the sufficiency of the evidence to support a conviction *de novo*, “considering the evidence in the light most favorable to the government and resolving any conflicts in the evidence in favor of the government.” *United States v. Bryan*, 159 F.4th 1274, 1287 (11th Cir. 2025) (citation modified). “A jury’s verdict cannot be overturned for insufficient evidence unless there is no reasonable construction of the evidence that could support a guilty verdict.” *United States v. Smith*, 22 F.4th 1236, 1242 (11th Cir. 2022). The factfinder “is free to choose among alternative reasonable interpretations of the evidence, and the government’s proof need not exclude every reasonable hypothesis of innocence.” *United States v. Tampas*, 493 F.3d 1291, 1298 (11th Cir. 2007) (citation modified). When the government relies on circumstantial evidence, the jury’s verdict must be supported by reasonable inferences and not “mere speculation.” *Bryan*, 159 F.4th at 1287.

Federal law prohibits forcibly assaulting, resisting, or impeding certain types of federal officers or employees. 18 U.S.C. § 111(a)–(b). The governing statute establishes three separate crimes in an ascending order of punishment and required elements:

(1) simple assault, (2) forcible assault, and (3) aggravated assault. See *United States v. Siler*, 734 F.3d 1290, 1296 (11th Cir. 2013). Relevant to this appeal, we have defined offenses in the second category to require something more than simple assault, “such as a willful attempt or threat to inflict *serious* bodily injury,” coupled with the apparent present ability, which causes the intended victim a reasonable apprehension of “immediate *serious* bodily harm or death.” *United States v. Fallen*, 256 F.3d 1082, 1088 (11th Cir. 2001). We have held that none of the three categories require a showing of physical contact. *Siler*, 734 F.3d at 1297.

Here, there was sufficient evidence for the jury to convict Franklin of forcible assault for his conduct during the June Incident. The jury heard ample testimony about Franklin’s aggressive comments, including direct threats that he would “punch [Wilson] in [his] face.” Photographic evidence showed that Franklin’s tractor was mere inches away from Wilson’s vehicle when Franklin threatened to “drive over” it. Thus, the jury was in a position to reasonably infer both that Franklin had the present ability to carry out his threats and that these threats created a reasonable apprehension of serious bodily injury or death.

II.

Next, Franklin argues that the government produced insufficient evidence for a reasonable jury to find him guilty of aggravated assault of a federal officer for the December Incident. Franklin disputes that the government ever proved that he used a “farming tractor” as a dangerous weapon towards Wilson.

The third category of forcible assault under 18 U.S.C. § 111 is aggravated assault, which requires a showing of all the elements of a regular forcible assault under the second category, plus the element of the usage of a “deadly or dangerous” weapon in the commission of the assault. *See Siler*, 734 F.3d at 1297; 18 U.S.C. § 111(b). Motor vehicles can constitute deadly or dangerous weapons under § 111. *See United States v. Gumbs*, 964 F.3d 1340, 1348 (11th Cir. 2020).

Although Franklin argues that evidence supports a reasonable, alternative hypothesis of what occurred on that rural road,² we are asked only to determine whether the evidence is sufficient to support the jury verdict. Here, there was sufficient evidence for the jury to convict Franklin of aggravated assault for his conduct during the December Incident. The government produced evidence showing Franklin knew what Wilson looked like and what vehicle he drove from the June Incident and intentionally maneuvered his tractor in a way that only hit the back side of Wilson’s vehicle.³ Franklin immediately left the scene, left his tractor in an

² Franklin argues that the tractor does not qualify as a “dangerous weapon” because of its low top speed; that numerous witnesses, including Wilson, considered the incident an accident; that the brief scraping on the rear end of Wilson’s vehicle was due to Wilson’s failure to yield; and that he did not know Wilson would be on the road that day. Unlike the June Incident, there was no evidence presented of jeers, slurs, or threats.

³ At trial, the government presented evidence that the collision in December could not have been accidental because of the narrow scope of damage on the back side of Wilson’s car, indicating that Franklin intentionally maneuvered his harrow to scrape the back side of the vehicle and nothing else.

“out-of-the-way” location, and arranged for a ride home from his wife. And text messages produced to the jury between Franklin and his wife showed correspondence about the “mailman” for several months after the June Incident. This evidence permitted the jury to make the reasonable inference that Franklin intentionally rammed into the back side of Wilson’s vehicle, even in the absence of further verbal assaults or threats. Despite Franklin’s efforts to represent the December Incident as a misdemeanor hit-and-run, the jury was convinced by the government’s theory of intentional assault. Drawing all inferences in the government’s favor, we that a reasonable construction of the evidence supports the jury’s verdict.

Alternatively, Franklin argues that the evidence produced at trial fatally varied from the allegation in the indictment—that Franklin used a “farming tractor” to “ram” into Wilson’s vehicle. Franklin argues that the harrow, not the tractor itself, caused the harm, and that the harrow did not ram into Wilson’s vehicle but merely scraped it. We are unpersuaded. A challenge premised on an indictment variance is “in essence” one form of a challenge to the sufficiency of the evidence. *United States v. Lander*, 668 F.3d 1289, 1295 (11th Cir. 2012) (per curiam). A variance occurs when the evidence at trial establishes facts materially different from those alleged in the indictment. *Id.* To succeed on a material variance challenge, an appellant must show (1) that the proof at trial “differed so greatly from the charges that [he] was unfairly surprised” and (2) that he “was unable to prepare an adequate defense,” accordingly. *Id.* (internal quotation marks omitted).

25-13004

Opinion of the Court

7

Here, the evidence at trial did not materially deviate from the indictment allegation that a farming tractor rammed Wilson's vehicle. The variance from "farming tractor" to harrow as the implement of collision is immaterial. We agree with the district court that a distinction between the two would belie common sense. And the government's scraping theory did not materially deviate from the "ram" language of the indictment. Photographic evidence indicated a significant amount of damage, including large gouges on the side of the car and the gas cap entirely ripped off the vehicle. Even if we found that the evidence did materially differ, Franklin has not shown that he was substantially prejudiced. He was neither surprised nor unable to present an adequate defense, evidenced by his choice to question multiple witnesses about the degree of damage sustained by the back side of Wilson's vehicle. *See Lander*, 668 F.3d at 1295. Thus, the evidence produced at trial is sufficient to sustain his conviction for aggravated assault.

III.

Next, Franklin argues that there was insufficient evidence to sustain his conviction for retaliating against a witness during the December Incident. In reply, the government notes that Franklin failed to move for a directed verdict on the retaliation conviction.

When an appellant raising a sufficiency of the evidence challenge fails to timely move for a judgment of acquittal on the challenged conviction below, we will uphold the conviction unless doing so would result in a "manifest miscarriage of justice." *United States v. Perez*, 661 F.3d 568, 573–74 (11th Cir. 2011) (per curiam). To

satisfy this standard, evidence on a key element of the offense must be “so tenuous that a conviction would be shocking.” *Id.* at 574 (quotation marks omitted). In determining whether this standard is met, we consider all evidence presented at trial and draw all reasonable inferences in favor of the jury’s verdict. *Id.*

Federal law prohibits conduct that “damages the tangible property of another person” with intent to “retaliate” against the person for providing information relating to the commission or possible commission of a federal offense. 18 U.S.C. § 1513(b)(2). A jury’s finding of the specific intent to retaliate will be affirmed if a reasonable juror could infer it from the direct and circumstantial evidence adduced at trial. *See United States v. Tapia*, 59 F.3d 1137, 1141–42 (11th Cir. 1995) (holding that a reasonable juror could have found the specific intent to retaliate when the evidence showed defendant was “aware” that the victim provided information to the government about criminal activity).

Here, Franklin fails to show a manifest miscarriage of justice in the jury’s guilty verdict on the retaliation count. Although the evidence may have supported an alternative, innocent hypothesis of his conduct during the December Incident, it was not so tenuous that his conviction was shocking. *Perez*, 661 F.3d at 574. The jury saw evidence of Franklin’s anger during and after the June Incident, including a video of the conflict itself. Wilson’s report of the June Incident led to police questioning and a warrant to search Franklin’s phone. The search revealed profane and racist text messages about Wilson sent by Franklin in the months that followed the June

Incident. Additionally, the police obtained a search warrant for Franklin's wife's phone, which revealed messages explaining that Franklin had seen Wilson in July and it "pissed him off." It is reasonable for the jury to infer from this evidence that Franklin bore a grudge against Wilson and intentionally collided with him because of the previous encounter. Drawing all inferences in favor of the jury's verdict, Franklin has not shown that the evidence of retaliation was "so tenuous that a conviction would be shocking." *Id.*

IV.

Next, Franklin argues that the evidence was insufficient for a reasonable jury to find that he committed the felonies because of Wilson's race. The Sentencing Guidelines provide a three-level enhancement to the base offense level if the finder of fact at trial determines beyond a reasonable doubt that the defendant "intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race . . . of any person." U.S.S.G. § 3A1.1(a). In a different context employing identical language, we have interpreted the phrase "because of" to impose a but-for causation requirement. *Bryan*, 159 F.4th at 1288 (interpreting the "because of" race element at 18 U.S.C. § 245(b)(2)(B)). This but-for causation element "does not require that a single factor alone produce the particular result." *Id.* (quotation marks omitted). "Other factors can combine to produce the result, so long as the other factors alone would not have done so—if, so to speak, it was the straw that broke the camel's back." *Id.* (internal quotation marks omitted).

Here, there was sufficient evidence for the jury to find that Franklin intentionally assaulted and retaliated against Wilson because of his race. Undisputed testimony and audiovisual exhibits showed Franklin's repeated usage of racial slurs directed towards Wilson. This, coupled with the circumstantial evidence adduced during the bifurcated portion of the trial showing that Franklin retained saved images of highly offensive memes against African Americans, allowed the jury to infer that Franklin would not have committed the underlying crimes against Wilson if not for his race. Although there may have been additional reasons beyond Wilson's race that incensed Franklin,⁴ there was enough evidence for the jury to conclude that race was the "straw that broke the camel's back." *Bryan*, 159 F.4th at 1288.

V.

Last, Franklin argues that the district court's sentence was procedurally and substantively unreasonable. He argues that the district court committed procedural error in overruling his objection to the eight-point enhancement for obstruction to justice, and substantive error when it failed to discuss his lack of criminal history and his forensic psychiatrist testimony. When a defendant

⁴ Franklin argues that the June confrontation stemmed from Wilson's failure to yield on the road, not his race. But the enhancement applies if Franklin selected Wilson as "the object of the offense of conviction" because of his race. U.S.S.G. § 3A1.1(a). The offense at issue was the verbal threats levied at Wilson after both cars were stopped. The circumstantial evidence is sufficient to support a special finding that these threats were made against Wilson because of his race.

challenges the procedural reasonableness of his sentence by arguing an improper guideline calculation or erroneous factual finding, we may affirm without reaching the procedural arguments if the district court makes a *Keene* finding. *United States v. Keene*, 470 F.3d 1347, 1349–50 (11th Cir. 2006). A district court makes a *Keene* finding when it expressly states that it would impose the same sentence regardless of the procedural issue. *Id.* at 1349.

Here, as an initial matter, the court made a clear *Keene* finding. When pronouncing the sentence, the court stated that even if it sustained Franklin’s objection to the obstruction enhancement at U.S.S.G. § 2J1.2(b)(1)(B), it “would have varied up” to impose the same 66-month sentence “base[d]” on the § 3553(a) factors.

When a *Keene* finding is made, we assume that the guidelines issue should have been decided the way the defendant argued, apply the new range, and then analyze the resulting substantive reasonableness under the 18 U.S.C. § 3553(a) factors.⁵ *Keene*, 470 F.3d at 1349–50. If the sentence is substantively reasonable even with

⁵ The district court must order a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment for the offense, deters criminal conduct, protects the public from future crimes of the defendant, and provides the defendant with any needed training and treatment in the most effective manner. *United States v. Kuhlman*, 711 F.3d 1321, 1327 (11th Cir. 2013); 18 U.S.C. § 3553(a)(2)(A)–(D). The district court must consider various factors in imposing a sentence, including: the nature of the offense, the defendant’s history, the kinds of sentences available, the advisory guidelines range, policy statements, restitution, and avoiding unwarranted sentencing disparities. *Kuhlman*, 711 F.3d at 1327; 18 U.S.C. § 3553(a)(1), (3)–(7).

the lower guideline range, affirmance is proper under *Keene* without reaching the procedural issues. *Id.* at 1350. We use an abuse of discretion standard when reviewing for substantive reasonableness. *United States v. Sotelo*, 130 F.4th 1229, 1244 (11th Cir. 2025). A district court abuses its considerable discretion only when “it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors.” *Id.* (quotation marks omitted). The district court does not have to give all the factors equal weight. *United States v. Olson*, 127 F.4th 1266, 1276 (11th Cir. 2025).

Here, Franklin fails to show that the district court abused its discretion in its 66-month sentence. He has not shown that his sentence is substantively unreasonable, even with a hypothetical *Keene* advisory range. Assuming the procedural objection was sustained in his favor, the ultimate sentence would have been a nine-month upward variance from the resulting guidelines range of 46–57 months.⁶

When imposing an upward variance, the sentencing court must provide a justification compelling enough to support the degree of the variance and complete enough to allow for meaningful appellate review. *United States v. Shaw*, 560 F.3d 1230, 1238 (11th Cir. 2009). But the justification need not be extraordinary. *Id.* One

⁶ The government argues that the hypothetical range would have remained unchanged because Franklin’s total offense level would remain 25, resulting in an advisory range of 57–71 months.

25-13004

Opinion of the Court

13

indicator of reasonableness is whether the sentence falls well below the maximum penalty. *United States v. Goldman*, 953 F.3d 1213, 1222 (11th Cir. 2020).

The court did not abuse its discretion in imposing an upward variance because the degree of the variance was supported by a compelling justification. The court explicitly found that certain § 3553(a) factors, including the nature and circumstances of the offenses and the need to reflect the seriousness of the offenses, promote respect for the law, and provide just punishment warranted a 66-month sentence and 9-month variance. The upward variance was justified by the “particularly aggravating” special finding that Franklin had chosen the victim because of his race.⁷ Further, the resulting sentence remained well below the statutory maximum of 240 months’ imprisonment. Accordingly, the sentence is substantively reasonable regardless of whether Franklin’s procedural objection is sustained. As such, affirmance is proper on *Keene* without reaching the issue of whether the district court erred when it applied the eight-level enhancement to his sentence.

AFFIRMED.

⁷ Franklin argues that the court did not properly weigh his mitigating character evidence and forensic psychiatrist report. However, the district court has “considerable” discretion, and each factor need not be weighed equally. *United States v. Olson*, 127 F.4th 1266, 1276 (11th Cir. 2025). The court was not required to expressly state that it had considered this mitigating evidence. See *United States v. Amedeo*, 487 F.3d 823, 833 (11th Cir. 2007). Thus, Franklin has not shown that the court abused its discretion.