

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13353
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SCOTT CARPENTER, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cr-00309-VMC-NHA-1

Before ROSENBAUM, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Scott Carpenter, Jr., appeals his convictions and total sentence for Hobbs Act robbery, *see* 18 U.S.C. § 1951(a), and for brandishing a firearm during and in relation to a crime of violence, *see*

id. § 924(c)(1)(A)(ii). He argues that the government breached its promise in the plea agreement “to recommend a Guideline sentence” by advocating for an upward variance at sentencing, and that the district court erred in denying a motion to suppress geo-location data from Google. After careful review, we conclude that Carpenter cannot satisfy the plain-error standard with respect to the government’s alleged violation of its promise to recommend a sentence within the guidelines range, and that he waived his challenge to the denial of the motion to suppress through his unconditional guilty plea. Accordingly, we affirm.

I.

A federal grand jury charged Carpenter with committing a series of armed robberies. After the district court denied his motion to suppress geo-location data from Google, Carpenter agreed to plead guilty under a written plea agreement.

Under the plea agreement, Carpenter agreed to plead guilty to Counts Ten and Eleven of the second superseding indictment, which charged him with Hobbs Act robbery, *see* 18 U.S.C. § 1951(a), and with brandishing a firearm during and in relation to a crime of violence, *see id.* § 924(c)(1)(A)(ii), arising from an armed robbery of a Dollar Tree store on August 11, 2021. The government agreed to dismiss the remaining ten counts. The government also promised to “recommend to the Court that the defendant be sentenced within the defendant’s applicable guidelines range as determined by the Court.”

Before sentencing, a probation officer prepared Carpenter's presentence investigation report ("PSR"). The PSR calculated a total offense level of 24 using "pseudo-counts," along with a criminal-history category of III, for a resulting guideline range of 63 to 78 months for Count Ten. The PSR noted that Count Eleven required a consecutive sentence of at least 25 years.

Carpenter objected to the inclusion of any pseudo-counts, among other things, and the government agreed. Both parties agreed that the total offense level should be 17, rather than 24, yielding a guideline range of 30 to 37 months. The district court sustained the objection and adopted the lower guideline range. The court then invited the parties' views on an appropriate sentence.

The government recommended a sentence at "the very top of the Guidelines," citing its promise in the plea agreement "to recommend a Guideline sentence." But it advised that, "certainly, if Your Honor saw fit to vary upward, it would not necessarily be inappropriate in this case." In support of its recommendation, the government asserted that Carpenter, who was 46 at sentencing, "ha[d] been committing robberies since he was 18 years old," that his crimes had become "increasingly violent," and that this was "not his first time in federal court being convicted of a § 924(c)" offense. The government also noted that, if this case had gone to trial, it could have proved § 924(c) offenses requiring a sentence of at least 175 years.

The district court inquired why, if that was the case, the government entered into a plea agreement that would permit Carpenter's release in his 70s. The prosecutor explained that "at some point . . . it's just a lot of time," and that a sentence of 25-plus years was sufficient given his age. The court expressed sympathy for Carpenter's victims, noting that trial would have ensured that Carpenter would be in prison for the rest of his life, but that the prosecutor had instead dismissed the other charges and decided to "let the judge take care of it." The prosecutor defended the plea agreement as a reasonable application of the government's discretion, which ensured that Carpenter was "guaranteed to be in prison until he was a very old man," while also leaving "room for [the court] to go higher if [it] saw fit."

Emphasizing the danger posed by Carpenter's conduct, and the fear he likely caused his victims, the district court again referred to the plea agreement and the government's agreement "to ask for a Guideline sentence." The prosecutor agreed that the government was bound by that provision and explained that his "argument is not that you should vary upward. What I'm saying is, you should not vary downward, and you should not, you know, do a downward departure. . . . [Y]ou should give him [the] top of the Guidelines." The prosecutor confirmed that the government's sentencing recommendation was "37 months plus the 25 years." The court noted that the range was only seven months, so it was "not much of a difference." The prosecutor responded that it was more about the "message you're sending."

25-13353

Opinion of the Court

5

Carpenter asked for a “time-served sentence of the 29 months and four days he served” as to Count 10, plus the 25-year mandatory minimum as to Count 11. He did not object to the government’s sentencing arguments.

The district court ultimately sentenced Carpenter to 36 months on Count Ten, plus a consecutive term of 25 years on Count Eleven. Carpenter now appeals.

II.

Carpenter first argues that the government materially breached the plea agreement by recommending an above-guideline sentence after promising to recommend a within-guideline sentence. In his view, the government paid mere “lip service” to its promise while “argu[ing] at length” for an upward variance.

Ordinarily, we review de novo the question whether the government has breached a plea agreement. *United States v. Malone*, 51 F.4th 1311, 1318 (11th Cir. 2022). But where “as here, the defendant did not object before the district court that the government breached a plea agreement, we review on direct appeal for plain error.” *Id.*

“We find plain error when (1) an error has occurred, (2) the error was plain, and (3) it affected the defendant’s substantial rights, and if those prongs are met, we then have discretion to correct the error if it (4) seriously affected the fairness of the judicial proceedings.” *Id.* at 1319. “For an error to be considered plain, the error must be clear or obvious, rather than subject to reasonable dis-

pute.” *United States v. Sosa*, 782 F.3d 630, 637 (11th Cir. 2015) (quotation marks omitted). It follows that not all breaches of a plea agreement will be clear or obvious. *Id.* “A defendant’s substantial rights are affected if the error affected the outcome of the district court proceedings.” *Malone*, 51 F.4th at 1319.

The government “breaches a plea agreement when it fails to perform the promises on which the plea was based.” *United States v. Hunter*, 835 F.3d 1320, 1324 (11th Cir. 2016). In evaluating the question of breach, “we ask whether the government’s conduct conflicted with the defendant’s reasonable understanding of the government’s promises when he entered his guilty plea.” *Malone*, 51 F.4th at 1319. “We apply an objective standard to decide whether the government’s actions are inconsistent with the defendant’s understanding of the plea agreement, rather than reading the agreement in a hyper-technical or rigidly literal manner.” *Hunter*, 835 F.3d at 1324 (citations and quotation marks omitted). If the government breaches a material sentencing promise, “we may remand the case for resentencing before a different judge so that the defendant may be sentenced under the agreement.” *Malone*, 51 F.4th at 1319.

The government can breach a plea agreement by “advocat[ing] a position contrary to its agreed-upon recommendation.” *United States v. Taylor*, 77 F.3d 368, 77 F.3d 368, 371 (11th Cir. 1996). Thus, the government cannot merely pay “lip service” to the agreement while, at the same time, advancing “a position requiring a longer sentence than it had agreed to recommend.” *Id.* And its

25-13353

Opinion of the Court

7

“begrudging recommendation,” consistent with the plea agreement, may be “too little, too late to undo the effect of its breach.” *Id.* So as relevant here, “[t]he government may oppose [a] request for a downward variance but may not advocate a position contrary to its agreed-upon recommendation.” *Malone*, 51 F.4th at 1322.

Because it makes no difference to the outcome here, we assume without deciding that the government breached the plea agreement. But even assuming that to be the case, Carpenter has made no showing that any “error affected the outcome of the district court proceedings.” *Malone*, 51 F.4th at 1319. Despite the government’s alleged breach, “the district court still sentenced [Carpenter] within the guidelines range as the court calculated it during the sentencing hearing.” *Id.* at 1322. “And that was all [Carpenter] could argue the government had agreed to recommend under this part of the plea agreement.” Thus, here, as in *Malone*, Carpenter cannot “satisf[y] the plain-error standard with respect to the government’s violation of its commitment to recommend a sentence within the guidelines range.” *Id.*

We therefore uphold the plea agreement.

III.

Carpenter next argues that the district court erred in denying his motion to suppress. He asserts that the “Google geofence warrant was overbroad, unparticularized, and lacked probable cause.” But he concedes that if we uphold the plea agreement, then the “issues raised in the [m]otion to [s]uppress are foreclosed.”

“[A] knowing and voluntary guilty plea waives all non-jurisdictional defects, including, as relevant here, the allegedly erroneous denial of a motion to suppress evidence.” *United States v. Edwards*, 142 F.4th 1270, 1276 (11th Cir. 2025) (citations and quotation marks omitted). While a defendant can preserve a challenge through a “conditional plea,” *see* Fed. R. Crim. P. 11(a)(2), the government must “give express approval for [the defendant] to plead conditionally,” *United States v. Pierre*, 120 F.3d 1153, 1156–57 (11th Cir. 1997).

Here, Carpenter’s guilty plea was unconditional, and he does not dispute that it was knowing and voluntary. He therefore waived his challenge to the “denial of a motion to suppress evidence.” *Edwards*, 142 F.4th at 1276.

IV.

For these reasons, we affirm Carpenter’s convictions and total sentence for Hobbs Act robbery and brandishing a firearm during and in relation to a crime of violence.

AFFIRMED.