

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-14264
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHANE JACQUES BARFIELD,

as guardian ad litem

Shane Jacques Barfield,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:24-cr-00005-WMR-JHR-1

Before LUCK, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Shane Barfield appeals his sentence of 120 months' imprisonment for one count of possession of a firearm by a convicted felon and one count of possession of a firearm by a person previously convicted of a misdemeanor crime of domestic violence. 18 U.S.C. §§ 922(g)(1), (9). He argues that the district court erred because it applied U.S.S.G. § 2K2.1(c)(1)(A) and U.S.S.G. § 2X1.1(c)(1)'s cross references to U.S.S.G. § 2A2.1(a)(2) based on attempted second-degree murder without finding that he specifically intended to kill police officers.

When reviewing a challenge to the applicability of the Guidelines, we consider legal issues de novo, review factual findings for clear error, and apply the Guidelines to the facts with due deference, which is akin to clear error review. *United States v. Rothenberg*, 610 F.3d 621, 624 (11th Cir. 2010). We are not a fact-finding body, so we do not consider on appeal arguments about whether record evidence could support by a preponderance of the evidence a factual finding that the district did not make. *See United States v. Fulford*, 662 F.3d 1174, 1181-82 (11th Cir. 2011) (explaining that “we will not substitute ourselves for the district court as factfinder,” declining to consider whether record evidence supported a factual finding that the district court did not make, and remanding to the district court for further findings).

A defendant convicted of unlawful possession of a firearm has their offense level calculated under § 2K2.1. U.S.S.G. § 2K2.1. However, under the cross-reference in § 2K2.1(c)(1), if the defendant possessed the gun in connection

with the commission or attempted commission of another felony offense, the guideline in § 2X1.1 applies if it results in a higher offense level. *Id.* § 2K2.1(c)(1)(A). Section 2X1.1 itself contains a cross-reference that directs that whenever an attempt is directly covered in another provision, that provision should be applied. *Id.* § 2X1.1(c)(1). Section 2A2.1 applies to attempted murder and provides for a base offense level of 33 if the object of the offense would have constituted first-degree murder, or a base offense level of 27 otherwise. *Id.* § 2A2.1(a)(1)-(2).

Second-degree murder “is the unlawful killing of a human being with malice aforethought,” and attempted second-degree murder requires a finding that the defendant intended to kill a person and took a substantial step towards that goal. 18 U.S.C. § 1111(a); *see Alvarado-Linares v. United States*, 44 F.4th 1334, 1346 (11th Cir. 2022). In *Braxton v. United States*, the Supreme Court reversed the affirmation of a sentence where the defendant was sentenced as if he had been convicted of attempted murder, though he only pleaded guilty to lesser charges, since the stipulation he made about his conduct was silent as to whether he had the specific intent to kill, and no other evidence established that intent. 500 U.S. 344, 349-50 (1991).

Here, the district court clearly erred by applying § 2K2.1(c)(1)(A) and § 2X1.1(c)(1)’s cross references to § 2A2.1(a)(2) based on attempted second-degree murder because, as the government concedes, it did not make a finding that

Barfield intended to kill an officer. The sentence of the district court is vacated and remanded for resentencing.

VACATED AND REMANDED.