

File Name: 26a0235p.06

**UNITED STATES COURT OF APPEALS**

FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

FRANK CLAY, JR.,

*Defendant-Appellant.*

No. 25-1515

Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

No. 1:24-cr-00128-1—Paul Lewis Maloney, District Judge.

Argued: June 2, 2026

Decided and Filed: August 19, 2026

Before: McKEAGUE, READLER, and BLOOMEKATZ, Circuit Judges.

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**COUNSEL**

**ARGUED:** Rachel L. Hampton, CAPITAL UNIVERSITY LAW SCHOOL, Columbus, Ohio, for Appellant. John J. Schoettle, UNITED STATES ATTORNEY’S OFFICE, Grand Rapids, Michigan, for Appellee. **ON BRIEF:** Rachel L. Hampton, CAPITAL UNIVERSITY LAW SCHOOL, Columbus, Ohio, Jeff A Turner, MILLER JOHNSON, Detroit, Michigan, for Appellant. Alexia A. Jansen, UNITED STATES ATTORNEY’S OFFICE, Grand Rapids, Michigan, for Appellee.

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**OPINION**

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BLOOMEKATZ, Circuit Judge. While on parole for state drug offenses, Frank Clay, Jr. caused a late-night disturbance with a firearm at a convenience store. When officers arrived and

attempted to handcuff Clay, he resisted. During the ensuing struggle, he bit one of the officers in the groin. Once arrested, officers found cash and cocaine in Clay's pockets.

Clay pleaded guilty to possessing a firearm as a felon. The district court applied three sentencing enhancements before sentencing him to 151 months in prison, to run consecutive to any potential state sentence arising from revocation of parole. Clay now appeals his sentence, challenging each of the enhancements and the district court's decision to impose a consecutive sentence. Because we determine that none of his arguments has merit, we affirm.

## BACKGROUND

### I. Factual Background

Late one evening in July 2024, law enforcement received a 911 call from a convenience store in Grand Rapids, Michigan. The store cashier and several customers reported that a man, later identified as Frank Clay, Jr., was carrying a firearm and acting in an aggressive manner. CCTV footage from inside the store depicts Clay acting erratically, gesticulating vigorously, and at one point reaching over the store counter.

Bodycam footage shows that when law enforcement arrived, they spoke to several witnesses who reported Clay had fired a gun. The officers encountered Clay walking outside next to the store. Clay ignored commands to stop and put his hands up, so the officers tased him. The officers approached to arrest Clay, who was laying on the ground face down.

The arrest did not go smoothly. At least three officers pinned Clay to the ground, but Clay resisted their attempts to handcuff him. During the struggle, Clay bit one of the officers on the penis several times. The officer yelled out: "He's biting me!" Bodycam Footage, Gov't Sent'g Exh. 3, at 06:27–06:28. The officers eventually succeeded in handcuffing Clay, at which point the bitten officer stepped away and stated that Clay "bit [him] on the fucking dick." *Id.* at 07:13–07:18. Clay's bites to the officer's penis caused an injury that required treatment at a local hospital. Following the biting, the officer had blood on his groin.<sup>1</sup>

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<sup>1</sup>Clay asserts he bit the officer only once. But the district court found that Clay bit the officer multiple times. We review that factfinding for clear error. *See United States v. Vowels-Harper*, 159 F.4th 1095, 1100 (6th

Post-arrest investigation revealed information unfavorable to Clay. Officers found on Clay's person a pistol, a plastic bag containing approximately 16 grams of cocaine divided into 11 smaller baggies, and about \$230 in cash. Later, law enforcement ran the serial number for Clay's pistol in the Grand Rapids Police Department database and discovered police reports indicating that the pistol had been stolen. Law enforcement also learned that Clay was on parole for four Michigan state offenses, including two cocaine distribution convictions and one conviction for possessing marijuana with intent to distribute.

## II. Procedural History

The government charged Clay with a single count of possessing a firearm as a felon. *See* 18 U.S.C. § 922(g)(1). Clay pleaded guilty without a plea agreement.

When preparing Clay's presentence report, the Probation Office recommended three sentencing enhancements. *First*, it recommended a two-point enhancement on the ground that Clay recklessly created a substantial risk of serious bodily injury when he bit the officer on the penis. *See* U.S.S.G. § 3C1.2. *Second*, the Probation Office recommended a four-point enhancement for possessing a firearm in connection with another felony offense. *See id.* § 2K2.1(b)(6)(B). It suggested that, while possessing the gun, Clay had committed the felony of possessing cocaine with intent to distribute. *Third*, the Probation Office recommended a two-point enhancement because Clay's pistol was reported as stolen. *See id.* § 2K2.1(b)(4)(A).<sup>2</sup>

Clay objected to all three enhancements. He argued, respectively, that (1) he did not create a risk of serious bodily injury when he bit the officer; (2) there was insufficient evidence to conclude that he intended to distribute cocaine; and (3) the police reports indicating that his firearm was stolen were not reliable. Clay also requested that the district court impose his sentence concurrent to any potential state sentence arising from revocation of parole. Finally, in his allocution Clay expressed remorse for his conduct and stated that he possessed the pistol only for protection.

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Cir. 2025). The bodycam footage does not cover the biting, and Clay has not proven this finding is clearly erroneous, so we decline to disturb it.

<sup>2</sup>Throughout this opinion we cite to the November 2024 version of the Sentencing Guidelines, as that version was in effect at the time of Clay's sentencing.

The government defended each enhancement. At sentencing, it adduced testimony from Sara Choi, a Special Agent at the Bureau of Alcohol, Tobacco, Firearms and Explosives. Through Agent Choi, the government introduced the CCTV and bodycam footage. The government also introduced photographs of the cocaine, cash, and pistol found on Clay's person, as well as a laboratory report confirming that the drugs found on Clay's person were cocaine. Lastly, the government introduced the police reports indicating that Clay's pistol was stolen, and Agent Choi testified to the police investigation behind the reports. Pointing to all this evidence as well as the presentence report, which contained information about Clay's biting, the government argued for the application of each enhancement.

The district court overruled Clay's objections. Adopting the presentence report's factual findings, it concluded that (1) "biting the officer, especially in the groin," had "clearly" created a substantial risk of serious bodily injury; (2) Clay intended to distribute the cocaine in his pocket; and (3) the police reports indicating that his firearm was stolen were "consistent" and sufficiently reliable. Sent'g Tr., R. 53, PageID 298, 300. It thus applied all three enhancements. With the statutory maximum capping Clay's sentence at 180 months, *see* 18 U.S.C. § 924(a)(8), the district court adopted an effective Sentencing Guidelines range of 151–180 months. It then analyzed the 18 U.S.C. § 3553(a) sentencing factors, paying particular attention to Clay's history of parole violations and the need for specific deterrence. The district court sentenced Clay to 151 months in prison, to run consecutive to any term of imprisonment arising from revocation of Clay's paroled state sentences. Clay preserved his enhancement objections, but when the district court asked if Clay was "satisfied" that it had "addressed all [of his] arguments," Clay's counsel responded: "Yes." Sent'g Tr., R. 53, PageID 315.

Clay timely appealed.

### ANALYSIS

Clay raises four arguments on appeal. He contests the three enhancements and argues that the district court inadequately addressed his request for a concurrent sentence. Each argument challenges the sentence's procedural reasonableness, which, as relevant here, requires the district court to correctly calculate the Guidelines range and adequately explain its reasoning

for imposing a consecutive sentence. *See United States v. Taylor*, 800 F.3d 701, 714 (6th Cir. 2015). Addressing each argument in turn, we are not persuaded to disturb Clay’s sentence.<sup>3</sup>

## **I. Reckless Endangerment Enhancement**

Clay first challenges the district court’s application of a two-point reckless endangerment enhancement under U.S.S.G. § 3C1.2. The enhancement applies if Clay “recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer.” *Id.* Resisting arrest qualifies as “fleeing” for purposes of the enhancement. *Id.* § 3C1.2 cmt. 3. The government must prove by a preponderance of the evidence that the enhancement applies. *United States v. Mukes*, 980 F.3d 526, 536 (6th Cir. 2020).

The district court determined that Clay “biting the officer, especially in the groin,” had “clearly” created a substantial risk of serious bodily injury. Sent’g Tr., R. 53, PageID 300. Clay argues that the record provides insufficient evidence to conclude that there was a substantial risk of serious bodily injury as opposed to merely a speculative risk.

### **A. Standard of Review & Legal Standard**

“[W]hile the question of what constitutes endangerment is a mixed question of law and fact, it is highly fact-based.” *Mukes*, 980 F.3d at 536–37 (quoting *United States v. Hazelwood*, 398 F.3d 792, 796 (6th Cir. 2005)). So, in analyzing whether Clay’s bites created a substantial risk of serious bodily injury, we “give ‘significant deference’ to the district court’s resolution.” *United States v. Histed*, 93 F.4th 948, 959 (6th Cir. 2024) (quoting *Hazelwood*, 398 F.3d at 796).

Understanding the meaning of the term “serious bodily injury” is the starting point to determine whether the enhancement applies. As relevant here, the Guidelines define three types of qualifying injuries, each of which show that the term contemplates quite severe wounds. *See United States v. Flores*, 974 F.3d 763, 765 (6th Cir. 2020) (adopting the Guidelines definition of

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<sup>3</sup>To preserve the issue in the event of an intervening change in law, Clay also asserts in a footnote that his § 922(g)(1) conviction is unconstitutional. He contends that a firearm’s interstate travel, without more, is an insufficient hook for Congress’s Commerce Clause power. However, as Clay recognizes, governing caselaw forecloses his argument. *United States v. Vaughn*, No. 23-5790, 2024 WL 4615853, at \*4 (6th Cir. Oct. 30, 2024) (collecting cases).

“serious bodily injury”). *First*, an injury qualifies if it involves “extreme physical pain.” U.S.S.G. § 1B1.1 cmt. 1(M). Absent a reason to “characterize . . . pain as ‘extreme,’” pain from ordinary cuts, bleeding, or bruising does not suffice. *United States v. Stamper*, 91 F. App’x 445, 465 (6th Cir. 2004). *Second*, an injury qualifies if it involves “the protracted impairment of a function of a bodily member, organ, or mental faculty.” U.S.S.G. § 1B1.1 cmt. 1(M). *Third*, an injury qualifies if it “requir[es] medical intervention such as surgery, hospitalization, or physical rehabilitation.” *Id.*

With this definition of serious bodily injury, the enhancement requires that Clay’s bites created a substantial risk of such injury. If no serious bodily injury has actually occurred, the government must “link a specific aspect” of Clay’s conduct “with a specific risk.” *United States v. Jones*, 81 F.4th 591, 600 (6th Cir. 2023) (quoting *Mukes*, 980 F.3d at 536). In other words, the government must present a particular “theory” of the risk that Clay’s bites created. *Mukes*, 980 F.3d at 537–39.

#### **B. Substantial Risk of Serious Bodily Injury**

The government points to the “obvious” risk of “physical bodily injury” to argue that Clay’s bites posed a substantial risk of serious bodily injury under all three pathways—extreme pain, protracted impairment, or necessitating significant medical intervention. Appellee Br. at 38. Considering the particular facts of this case, we agree.

The record evidence supports the district court’s decision to apply the enhancement. Three facts are key to our evaluation: (1) Clay bit the officer’s penis; (2) with enough force to cause an injury requiring medical treatment; and (3) the officer had blood on his groin. Taken together, these facts show that Clay’s biting easily could have caused extreme physical pain, protracted impairment of penile function, or an injury requiring significant medical intervention. Although the record is insufficient to conclude that the biting actually caused a serious bodily injury, it is enough to conclude that there was a substantial risk of such injury.

The location of the bites, the officer’s penis, is crucial. Different parts of the body have different vulnerability to injury. *See Jones v. City of Cincinnati*, 736 F.3d 688, 695 (6th Cir. 2012) (contrasting injuries to the “arms, torso, back, and legs” with injuries to the “head, throat,

neck, heart, or groin”). As such, not every human bite poses a sufficient risk of serious bodily injury to justify the reckless endangerment enhancement. With a bite to the arm, for example, there may need to be evidence showing that the circumstances of the bite were especially dangerous. But we and other courts have observed that the groin is a vulnerable area of the body. *See id.*; *L.A. Press Club v. Noem*, 171 F.4th 1179, 1192 (9th Cir. 2026); *Glenn v. Washington County*, 673 F.3d 864, 871 (9th Cir. 2011). Indeed, the penis is a particularly “sensitive [and] private body part.” *King v. Rubenstein*, 825 F.3d 206, 215 (4th Cir. 2016). For this reason, courts have been especially troubled by conduct that presented a “significant . . . risk of injury” to the penis, even if the conduct might have been less problematic as applied to a different part of the body. *See United States v. Edwards*, 666 F.3d 877, 886 (4th Cir. 2011). Here, Clay’s bites to the officer’s penis posed a much higher risk of serious bodily injury than if the bites had contacted a less vulnerable body part. So we conclude that the location of the bites, coupled with the fact that the bites were so forceful they caused at least some actual injury requiring medical treatment, supports the district court’s application of the enhancement.

Clay’s argument to the contrary contends that the record is insufficient to support the enhancement because it lacks several key details. He observes that the record does not reveal how severe the officer’s injury was, nor the type or extent of medical treatment the officer received. He also points out that the government failed to introduce specific evidence at sentencing about the bites, beyond relying on the presentence report’s short account. Further, some evidence in the record suggests that the bites were not actually that serious. For example, in the immediate aftermath of the incident the bitten officer stated to a fellow officer: “I’m good.” Bodycam Footage, Gov’t Sent’g Exh. 3, at 07:13–07:18. But all of this just shows that the record is insufficient to conclude that the officer *actually* suffered a serious bodily injury; it does not show that the record was insufficient to conclude that Clay’s bites posed a substantial risk of such injury. Therefore, the absences in the record do not prove that the district court erred by applying the enhancement. *See Hazelwood*, 398 F.3d at 796.

We affirm the application of the U.S.S.G. § 3C1.2 reckless endangerment enhancement.

## II. Firearm In Connection With Another Felony Offense Enhancement

The next disputed enhancement is the district court's application of U.S.S.G. § 2K2.1(b)(6)(B)'s four-point enhancement. The enhancement applies if Clay "used or possessed any firearm or ammunition in connection with another felony offense." *Id.* The enhancement requires three elements: (1) use or possession of a firearm; (2) in connection with; (3) another felony. The government bears the burden of proving each element by a preponderance of the evidence. *United States v. Seymour*, 739 F.3d 923, 929 (6th Cir. 2014).

Clay contests only the third element: that he committed another felony offense. The district court found that Clay committed the felony of possessing cocaine with intent to distribute. *See* Mich. Comp. Laws § 333.7401(2)(a); 21 U.S.C. § 841(a)(1). Yet Clay argues that the government had not shown by a preponderance of the evidence that he intended to distribute the cocaine in his pocket.

### A. Standard of Review & Legal Standard

The standard of review for Clay's argument benefits from some untangling. We have often stated that our review of the U.S.S.G. § 2K2.1(b)(6)(B) enhancement is "deferential." *Seymour*, 739 F.3d at 929; *United States v. Shanklin*, 924 F.3d 905, 919 (6th Cir. 2019). But that standard of review applies specifically to the second element: the district court's determination about a connection between the firearm and the other felony. *See Seymour*, 739 F.3d at 929; *Shanklin*, 924 F.3d at 919–20. In contrast, when reviewing whether a defendant committed another felony offense, we have sometimes applied clear error review and sometimes applied de novo review. *Compare United States v. Seuell*, 135 F.4th 480, 485–86 (6th Cir. 2025) (clear error), *with Mukes*, 980 F.3d at 533–36 (de novo).

Which standard of review is appropriate turns on the nature of the defendant's challenge. When a defendant's claim raises a legal question, such as whether the text of a criminal statute reaches the defendant's undisputed conduct, we review the claim de novo. *See United States v. Ruiz-Lopez*, 53 F.4th 400, 403 (6th Cir. 2022); *see also Mukes*, 980 F.3d at 533–36. But when a factual finding underpins the defendant's challenge, we review for clear error. *See Ruiz-Lopez*, 53 F.4th at 403–04; *Seuell*, 135 F.4th at 485.

Clay's challenge here targets the district court's factfinding. Clay contests the district court's determination that he intended to distribute the cocaine on his person. We have previously held that such a determination is a question of fact that we review for clear error. *United States v. Benton*, 957 F.3d 696, 702 (6th Cir. 2020); *see also United States v. McQueen*, No. 21-4211, 2022 WL 16848875, at \*1 (6th Cir. Nov. 9, 2022); *United States v. Sain*, No. 24-5469, 2025 WL 2092635, at \*5 (6th Cir. July 25, 2025). So we do not disturb the district court's intent finding unless we have "the definite and firm conviction that a mistake has been committed." *United States v. House*, 872 F.3d 748, 751 (6th Cir. 2017) (quoting *United States v. Yancy*, 725 F.3d 596, 598 (6th Cir. 2013)). The district court did not need direct evidence to conclude that Clay intended to distribute cocaine, rather, circumstantial evidence may suffice. *Seuell*, 135 F.4th at 486.

## **B. Intent to Distribute**

The district court did not clearly err when it determined that a preponderance of the evidence proved Clay had the requisite intent to distribute.

As a preliminary matter, Clay contests how much cocaine he possessed, which is relevant as circumstantial evidence of intent. *See United States v. Wettstain*, 618 F.3d 577, 585 (6th Cir. 2010). The district court adopted the presentence report's finding, based on a field test, that Clay had approximately 16 grams of cocaine. Nevertheless, without contesting the actual weight of the drugs found on his person, Clay argues on appeal that only 0.91 grams of cocaine can be attributed to him. He points out that the laboratory confirmation of the field test examined only that amount—the contents of one of the smaller cocaine baggies contained within the larger bag.

For two reasons, we reject Clay's argument and proceed using the 16-gram figure. *First*, not only did Clay fail to object to the 16-gram figure below, but his own counsel stated that Clay had "16 grams of cocaine" "in his possession." Sent'g Tr., R. 53, PageID 259. Coupled with the fact that Clay has not proven the 16-gram figure is incorrect, his failure to object means the district court was entitled to rely on that figure. *See United States v. Hunter*, 558 F.3d 495, 506 (6th Cir. 2009); *United States v. Geerken*, 506 F.3d 461, 467 (6th Cir. 2007). *Second*, to the extent Clay challenges the reliability of the government's random sampling methodology, he has

forfeited that argument by not raising it in his opening brief. *See Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019).

With the 16-gram figure, significant evidence supports the district court's finding that Clay intended to distribute cocaine. First and foremost is the packaging of the drugs. As noted, Clay's cocaine was split into 11 small baggies within the larger bag. Such packaging "suggest[s] he planned to distribute." *Seuell*, 135 F.4th at 486. The amount of cocaine—significantly more than an average cocaine user would carry, *see United States v. Neal*, 817 F. App'x 148, 150 (6th Cir. 2020)—is further evidence. So too is the approximately \$230 in cash, *see McQueen*, 2022 WL 16848875, at \*2, the firearm, *see United States v. Wilkerson*, No. 20-5879, 2021 WL 2929721, at \*4 (6th Cir. July 12, 2021), and Clay's previous convictions for drug distribution, *see United States v. Ayoub*, 498 F.3d 532, 548 (6th Cir. 2007).

Even if another conclusion was possible, the district court did not clearly err by reaching the finding it did. As the district court observed, the amount of cash was not very large. Nor is 16 grams of cocaine a huge quantity. And unlike some other cases where we affirmed a finding of intent to distribute, there is no glaring evidence of trafficking like texts discussing drug prices. *Cf. Neal*, 817 F. App'x at 149–50. Nevertheless, possible alternative conclusions do not show clear error. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). Given the considerable circumstantial evidence, we do not have a "definite and firm conviction" that Clay lacked an intent to distribute. *See House*, 872 F.3d at 751 (quoting *Yancy*, 725 F.3d at 598).

Previous cases confirm our conclusion. This case resembles *United States v. Falls*, where we affirmed a finding of intent to distribute based primarily on the fact that the defendant possessed 13.7 grams of marijuana that was packaged into 10 bags. 533 F. App'x 505, 508 (6th Cir. 2013). It also looks like *McQueen*, which affirmed an intent finding based on "a small baggie of suspected marijuana," "two baggies of suspected crack cocaine," and approximately \$3,500 in cash. 2022 WL 16848875, at \*2. In these cases, as here, circumstantial evidence was sufficient to support the district court's finding on clear error review. *See Seuell*, 135 F.4th at 486.

Clay's primary counterargument is that he purchased the cocaine for personal use. However, each of his arguments on this front falls short of showing clear error. Clay states that he was high the night of the incident and contends that he threw a crack pipe away immediately before his arrest, but no record evidence proves his claim and the possibility that Clay was using drugs does not foreclose that he intended to sell drugs too. Clay next contends that the quantity of cocaine is consistent with personal use, but even so, we have affirmed an intent to distribute finding when less drugs were present than here. *E.g., Falls*, 533 F. App'x at 508 (13.7 grams of marijuana). Finally, Clay maintains that he possessed a firearm for personal protection, rather than in support of drug distribution. To be sure, there may be reasons to credit that claim. For instance, the presentence report describes a young Clay witnessing gun violence, which could perhaps explain why Clay felt the need to have a gun for personal protection. But the district court did not credit Clay's argument, and Clay's need to carry a gun for personal protection is not inconsistent with a finding that he was dealing drugs. Therefore, pointing to personal protection is insufficient to reverse the district court's finding of intent to distribute. *See Anderson*, 470 U.S. at 574.

Clay also points to several cases where we reversed a district court's intent finding. Perhaps his strongest cases are *United States v. Woods*, 26 F. App'x 448 (6th Cir. 2001), *United States v. Haywood*, 280 F.3d 715 (6th Cir. 2002), and *United States v. Logan*, No. 24-3264, 2025 WL 1012722 (6th Cir. Mar. 31, 2025), but all three had distinct facts that render them poor comparators. Start with *Woods*. There, we examined three pieces of evidence: (1) 7.5 grams of marijuana separated into 6 small bags, (2) a gun near the drugs, and (3) Woods's presence in a "drug area." *Woods*, 26 F. App'x at 449, 451. We determined that the evidence was "equally consistent" with personal use as with distribution, and thus did not prove intent by a preponderance of the evidence. *Id.* at 451–52. But in *Woods*, unlike here, the defendant testified that he intended to consume the drugs for personal use. *Id.* at 450–51; *see also United States v. Burton*, 440 F. App'x 474, 478 (6th Cir. 2011) (distinguishing *Woods* on this basis). Furthermore, *Woods* noted that the street value of the drugs present was small, approximately

thirty dollars, which cut against intent to distribute. 26 F. App'x at 451. Clay's cocaine was worth much more.<sup>4</sup>

*Haywood* and *Logan* are similarly unavailing for Clay. *Haywood* held that there was insufficient evidence to find intent to distribute 1.3 grams of cocaine, but it specifically noted that—unlike here—the defendant “had not divided” the cocaine “into individual allotments suitable for sale” and did not “possess either a large amount of cash or a firearm.” 280 F.3d at 722. Likewise in *Logan*, the drugs were “not individually packaged,” and even the government in that case did not think the evidence established intent to distribute. 2025 WL 1012722, at \*2. Given these factual distinctions, neither *Haywood* nor *Logan* controls this case.

Overall, Clay has not shown clear error in the district court's finding that he intended to distribute cocaine. So we affirm the application of the U.S.S.G. § 2K2.1(b)(6)(B) enhancement.

### III. Stolen Firearm Enhancement

Clay also challenges the two-point stolen firearm enhancement under U.S.S.G. § 2K2.1(b)(4)(A). The enhancement applies if “any firearm” involved in Clay's offense “was stolen.” *Id.* The enhancement is strict liability; Clay did not need to know that he possessed a stolen gun. *Id.* § 2K2.1 cmt. 8(B); *see also United States v. Palos*, 978 F.3d 373, 375–76 (6th Cir. 2020). The government must prove that Clay's gun was stolen by a preponderance of the evidence. *United States v. Chambers*, 638 F. App'x 437, 445 (6th Cir. 2015) (citing *United States v. Dunham*, 295 F.3d 605, 609 (6th Cir. 2002)).

Looking to police reports indicating that Clay's gun was stolen, the district court found that “[t]he gun was, in fact, stolen.” Sent'g Tr., R. 53, PageID 298. However, Clay maintains that the police reports were insufficiently reliable for the district court to base its finding on them.

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<sup>4</sup>Neither party in this case introduced evidence regarding the street value of cocaine. Some of our cases have referenced testimony that the street value of cocaine is approximately \$100 per gram. *United States v. Lucas*, No. 19-6390, 2021 WL 4099241, at \*26 (6th Cir. Sep. 9, 2021). Of course, street value varies by time, place, and drug purity. But it is safe to say that Clay's 16 grams of cocaine was worth significantly more than \$30, thus distinguishing *Woods*.

### A. Standard of Review & Legal Standard

We review the district court’s reliance on the police reports for clear error. *United States v. Armstrong*, 920 F.3d 395, 398 (6th Cir. 2019). Resisting that standard of review, Clay’s reply brief suggests that we review his claim de novo because it sounds in due process. But Clay has not raised a due process claim—indeed, the words “due process” never appear in his opening brief. Rather, Clay raises a straightforward argument that the police reports lacked sufficient indicia of reliability. His own cited authorities agree that clear error review applies to such a claim. *United States v. Santana*, 723 F. App’x 331, 338 (6th Cir. 2018).

The district court could rely on the police reports indicating Clay’s firearm was stolen so long as they had a “minimal indicium of reliability.” *Armstrong*, 920 F.3d at 398 (quoting *United States v. Silverman*, 976 F.2d 1502, 1504 (6th Cir. 1992) (en banc)). This requirement is “a relatively low hurdle.” *Santana*, 723 F. App’x at 337 (quoting *United States v. Greene*, 71 F.3d 232, 235 (6th Cir. 1995)). Nevertheless, we “do not endorse” unquestioned reliance on police reports “as evidence in sentencing determinations.” *United States v. Jones*, 815 F. App’x 870, 878 (6th Cir. 2020) (quoting *United States v. Jackson*, 477 F. App’x 377, 379 (6th Cir. 2012)). We instead require “some evidentiary basis” to believe the report is accurate, *Armstrong*, 920 F.3d at 398 (quoting *Silverman*, 976 F.2d at 1504).

### B. Reliability

The district court did not clearly err when it relied on the police reports to conclude that Clay possessed a stolen firearm.

We begin by setting out in detail the reports and corresponding police investigation. In March 2024, over a year before Clay’s disturbance at the convenience store, an unidentified individual, R.A., informed the Grand Rapids Police Department that his pistol had been stolen. His gun had the same serial number as the gun later found on Clay. When reporting the theft, R.A. explained that his nephew visited him the day before with a friend. R.A. let them inside his home unaccompanied, and afterwards realized his firearm was missing.

Shortly after R.A. filed the police report, officers called him back for follow up. This time, R.A. said his nephew stopped by with a baby and an unidentified man and woman. R.A. again reported that his guests were inside unaccompanied, and that he later realized his firearm was gone. At this point, officers called R.A.'s nephew to investigate further. The nephew stated that he was at R.A.'s house that day but did not take the gun, and he claimed that R.A. had been hosting a "female friend . . . while [R.A.'s] wife was out." Police Report, Gov't Sent'g Exh. 7, at 2. Based on the nephew's response, officers called R.A. a second time. The investigating officer "explained the consequences for making a false report." *Id.* After that warning, R.A. explained that he and his nephew "picked up two women at the liquor store and brought them back to his house." *Id.* R.A. stated that one of the women was unaccompanied in the room where he kept the gun. Following these calls, officers entered the gun as stolen in the police department's database, and apparently did not speak to R.A. again until the gun was found.

Fast-forward a year to when officers matched the serial number on Clay's gun to R.A.'s stolen gun. At this point, they contacted R.A. one final time. R.A. admitted that he was not initially truthful about who was at his house because he did not want his wife to find out about the two women. But he affirmed that all the other information he had provided about the theft was truthful.

Overall, the police reports had sufficient corroboration and indicia of reliability for the district court to rely on them. The throughline of the police reports is that R.A. consistently reported his gun as stolen. Crucially, the police investigation also corroborated several key aspects of the reports. Indeed, officers confirmed that R.A.'s nephew was at R.A.'s house the day of the theft, which backs up the timeline and gist of the report. *See United States v. Carroll*, No. 24-5256, 2024 WL 4953549, at \*2, \*5 (6th Cir. Dec. 3, 2024). The fact that R.A. changed other parts of his story does not render his report that his gun was stolen off-limits to the district court. Not every aspect of R.A.'s account needed to be corroborated (or even true) for the district court to rely on the consistent portion. *See Armstrong*, 920 F.3d at 399–400. Nor does R.A.'s inconsistency about his visitors cast particular doubt on his report that his gun was stolen, as his plain motive to conceal who was at his house (to hide an affair) has no obvious link to his

gun. Thus, the district court did not clearly err by relying on the police reports to conclude that Clay possessed a stolen firearm.

Clay's arguments to the contrary do not persuade. Clay pokes holes in the reports by focusing on the inconsistencies about the suspects and the fact that officers had to warn R.A. of the consequences of a false report. But, as noted, some inconsistencies in a report do not necessarily render the whole report unreliable. *See id.* Furthermore, although Clay contends that it is speculative whether the gun was stolen at all, versus given or traded to one of R.A.'s visitors, the district court did not need direct proof of theft to conclude by a preponderance of the evidence that the gun had been stolen. *See Carroll*, 2024 WL 4953549, at \*4–5.

Clay's primary case on this issue, *United States v. Black*, does not change matters. No. 23-1622, 2025 WL 1356614 (6th Cir. May 9, 2025). *Black* reversed an application of the stolen firearm enhancement when the police report that the gun was stolen was of dubious accuracy. But the report's reliability issues in *Black* far surpassed those present here. *Black* involved a report consisting of "quadruple hearsay," where the owner's knowledge of the purported theft came from a relative of the friend to whom he had lent the gun. *Id.* at \*3–4. The report also provided no "context" about "any of the persons involved," no information about "the circumstances of the alleged theft," and no other "corroborating evidence." *Id.* at \*4. Nor did the government put any witness on the stand to explain any police investigation into the report. *Id.* The distinctions with this case are apparent. R.A. was not relying on multiple levels of hearsay when he made his police report, but rather had personal knowledge that his gun was missing. Then, officers investigated the report, corroborated the overall context by speaking to R.A.'s nephew, and the government put Agent Choi on the stand to explain the investigation. *Black* itself recognized that this kind of corroboration could render a police report reliable. *See id.* Accordingly, *Black* provides little help to Clay.

In sum, the district court did not clearly err when it relied on the police reports to conclude that Clay possessed a stolen firearm. Therefore, we affirm the application of the U.S.S.G. § 2K2.1(b)(4)(A) enhancement.

#### IV. Consecutive Sentence

In his final argument, Clay takes issue with the district court's decision to impose his sentence consecutive to any potential terms of state incarceration arising from revocation of parole. He contends that the district court insufficiently explained its reasoning by not discussing U.S.S.G. § 5G1.3, which provides factors relevant to that decision.

Clay's argument falters at the outset because he failed to preserve it below. Recall that at the end of the sentencing hearing the district court asked Clay if he was "satisfied" that it had "addressed all [of his] arguments," and Clay's counsel responded: "Yes." Sent'g Tr., R. 53, PageID 315. That failure to object constitutes forfeiture. *See United States v. Vonner*, 516 F.3d 382, 385 (6th Cir. 2008) (en banc); *United States v. Bostic*, 371 F.3d 865, 872–73 (6th Cir. 2004).

The parties dispute which standard of review governs Clay's forfeited claim. Clay asks us to review for plain error, while the government contends that Clay either invited the alleged error or waived it. However, we need not reach the parties' debate over the standard of review because Clay's claim fails even under the relatively more forgiving plain error standard. Assuming plain error review applies, Clay must prove that the alleged error was "clear or obvious," affected his "substantial rights," and seriously affected "the fairness, integrity or public reputation" of the proceedings. *United States v. Lopez-Medina*, 461 F.3d 724, 746 (6th Cir. 2006); *see also United States v. Olano*, 507 U.S. 725, 736 (1993).

Clay has not shown that any potential error was clear or obvious. For one thing, even though the district court did not rely on this provision explicitly, U.S.S.G. § 5G1.3 cmt. 4(C) recommends that a sentence for an offense committed while on parole run consecutive to any sentence arising from revocation. The district court followed that guidance here. Moreover, the district court imposed a consecutive sentence immediately after its analysis of the 18 U.S.C. § 3553(a) factors, including its discussion of Clay's repeated parole violations and the need for specific deterrence. The district court's rationale was thus "generally clear," so it did not need to discuss U.S.S.G. § 5G1.3 explicitly. *United States v. Potts*, 947 F.3d 357, 369 (6th Cir. 2020)

(citation omitted). In short, the district court likely did not err at all when it imposed a consecutive sentence, and as such Clay certainly cannot prevail on plain error review.

### **CONCLUSION**

We affirm Clay's sentence.