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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee*, *v*. GLENN DAEWARD BOYD, *Defendant-Appellant*.	No. 25-1590

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:24-cr-00050-1—Paul Lewis Maloney, District Judge.

Argued: July 29, 2026

Decided and Filed: September 2, 2026

Before: CLAY, MURPHY, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Marcus Miller, FEDERAL PUBLIC DEFENDER'S OFFICE, Grand Rapids, Michigan, for Appellant. Jonathan Roth, UNITED STATES ATTORNEY'S OFFICE, Grand Rapids, Michigan, for Appellee. **ON BRIEF:** Paul L. Nelson, FEDERAL PUBLIC DEFENDER'S OFFICE, Grand Rapids, Michigan, for Appellant. Jonathan Roth, UNITED STATES ATTORNEY'S OFFICE, Grand Rapids, Michigan, for Appellee.

CLAY, J., delivered the opinion of the court in which MURPHY and BLOOMEKATZ, JJ., concurred. MURPHY, J. (pp. 16–18), delivered a separate concurring opinion.

OPINION

CLAY, Circuit Judge. While incarcerated in a South Carolina state prison on manslaughter and assault charges, Glenn Daeward Boyd used a contraband cell phone to pose as an underage girl on a dating app. Under this false identity, he exchanged sexually explicit messages with an adult Michigan man ("B.G."). After Boyd threatened to publicly reveal their messages unless B.G. sent Boyd money, B.G. committed suicide. For these actions, Boyd was convicted of one count of attempted extortion in violation of 18 U.S.C. § 1951, one count of stalking with intent to harass and intimidate in violation of 18 U.S.C. §§ 2261A(2)(b) and 2261(b)(5), and five counts of wire fraud in violation of 18 U.S.C. § 1343. The district court sentenced him to 272 months' imprisonment, and Boyd now appeals the reasonableness of his sentence. For the reasons explained below, we **AFFIRM** the district court in part, **REVERSE** in part, and **REMAND** for resentencing in accordance with this opinion.

I. BACKGROUND

While incarcerated in South Carolina's Kershaw Correctional Facility on manslaughter and assault charges, Glenn Boyd created a profile on the Plenty of Fish dating app, purporting to be an 18-year-old woman going by the name Jadwetwet06 ("Jad"). On August 2, 2023, Boyd, as Jad, matched and began to exchange messages with a 22-year-old Michigan man, referred to herein as "B.G." On August 3, "Jad" told B.G. that she was looking for a friend with benefits, and the pair exchanged increasingly sexual messages and pictures.

On August 4, Boyd kicked his extortion scheme into high gear. That morning, "Jad" and B.G. resumed exchanging sexual messages and pictures. Jad also told B.G. that she lived with her grandparents. Later in the day, Jad messaged B.G., stating: "I am only 15 but I will [be] 16 soon. I only like older men cuz boys my age is childish." Trial Tr., R.100, PageID #1142. B.G. responded that he wished Jad had told him she was under 18 sooner because he was 22 with two kids that he could not risk losing. B.G. asked Jad to delete their messages and move the conversation to SnapChat, where all of their messages would automatically delete. Jad replied that she did not have SnapChat, but that no one would go through her phone and that she would not get B.G. in trouble. B.G. and Jad continued to send sexually explicit messages, pictures, and videos via a messaging app.

At some point later that same day, Boyd, now pretending to be Jad's grandparents, messaged B.G., stating: "This is Jad grandparents . . . You have two minutes to respond back or I'm going to call the police and contact your family." *Id.* at PageID #1145. B.G. responded that he thought Jad was 18, but the "grandparents" said that they could see that Jad had told him that she was 15. They then sent B.G. a message stating: "[Y]ou can be a man about it and we can work this out and I'll leave your family members out of this." *Id.* at PageID #1146. They emphasized how much B.G. could lose if they called the police before asking B.G. to immediately send them money via CashApp. B.G., recognizing the extortion attempt, responded that he was "calling the law now for scammers." *Id.* at PageID #1147.

Boyd, still posing as Jad's grandparents, redoubled his threats to share their messages with B.G.'s family. Using a Facebook account with the username "Kim Smith," he messaged B.G.'s ex-fiancée and the mother of B.G.'s children, referred to herein as "N.A.", stating that there was "some info that [she] need[ed] to see." Trial Tr. II, R.101, PageID #1318. N.A. responded that B.G. had told her about Jad and that she did not "care to see" anything; Boyd responded by sending her screenshots of Jad and B.G.'s messages. *Id.* Boyd also messaged N.A.'s mother, sending more screenshots of the conversation and telling her that N.A. was "going to end up losing her kids messing with [B.G.]. He is a pedophile." Trial Tr. I, R.100, PageID #1174. By 5:45 pm, still on August 4, 2023, Boyd began publicly posting messages and conversation screenshots on N.A.'s mother's Facebook; in one comment, he wrote that "[B.G.] is a pedophile, I have all the evidence if anyone wants to see it." *Id.* at PageID #1171. B.G. and N.A. reported the extortion attempt to the local police department.

At around 6:20 pm, B.G. committed suicide. When police responded, they discovered B.G. still holding a gun, with a self-inflicted gunshot wound in his head and neck. Police also recovered B.G.'s cellphone from the scene and extracted its contents. They traced Jad's phone number to a service provider called TextNow, which allows users to make and receive calls and texts over the internet, and, after obtaining a search warrant for TextNow records, identified Boyd as the perpetrator of the extortion scheme.

Boyd was indicted on seven counts: attempted extortion of B.G. in violation of the Hobbs Act, 18 U.S.C. § 1951 (Count 1); stalking with intent to harass and intimidate B.G. in violation of 18 U.S.C. §§ 2261A(2)(b) and 2261(b)(5) (Count 2); and wire fraud for five instances in which Boyd sent fraudulent messages via text in violation of 18 U.S.C. § 1343 (Counts 3-7). A jury found him guilty on all counts.

At sentencing, the district court applied U.S.S.G. § 2B3.2, for crimes relating to "Extortion by Force or Threat of Injury or Serious Damage," to calculate Boyd's base offense level at 18. It also applied two enhancements to Boyd's sentence: the 7-point enhancement from U.S.S.G. § 2B3.2(b)(3)(A)(i), which applies "if a firearm was discharged" during the commission of the defendant's crime; and the 6-point enhancement from U.S.S.G. § 2B3.2(b)(4)(C), which applies "[i]f any victim sustained . . . [p]ermanent or [l]ife-[t]hreatening [b]odily [i]njury."[1] This resulted in an Advisory Guideline range of 151-181 months, based on Boyd's offense level of 29 with criminal history category VI. The district court then applied a two-point upward variance to Boyd's sentence, resulting in an Advisory Guideline range of 188-235 months. The court ultimately sentenced Boyd to 212 months' imprisonment on Counts 1 and 3-7 and a consecutive 60-month term of imprisonment on Count 2, for a total term of 272 months.

Boyd objected to the district court's use of U.S.S.G. § 2B3.2 to calculate his base offense level, arguing that U.S.S.G. § 2B3.3, for crimes relating to "Blackmail and Similar Forms of Extortion," was more appropriate. He also objected to the court's application of the sentence enhancements and its decision to run his sentences consecutively. The district court overruled all of Boyd's objections.

Boyd now appeals the reasonableness of his sentence.

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[1]These enhancements would ordinarily combine to increase Boyd's offense level by 13 points. But the combination of these enhancements is capped at 11, U.S.S.G. § 2B3.2(b), so the § 2B3.2(b)(4)(C) enhancement was only treated as a 4-point enhancement for sentencing purposes.

II. DISCUSSION

A. Sentencing Guideline

The district court used U.S.S.G. § 2B3.2, "Extortion by Force or Threat of Injury or Serious Damage," which carries a base offense level of 18, to determine Defendant's base offense level.[2] Defendant argues that the court should have instead used U.S.S.G. § 2B3.3, "Blackmail and Similar Forms of Extortion," which carries a base offense level of 9. We review the district court's Guideline choice *de novo* and conclude that the court made no error in selecting U.S.S.G. § 2B3.2. *See United States v. Douglas*, 634 F.3d 852, 861 (6th Cir. 2011).

To determine which Guideline applies to a defendant's crime, district courts first "[r]efer to the Statutory Index (Appendix A)" contained in the Sentencing Guidelines. U.S.S.G. § 1B1.2(a); *see also United States v. Hochschild*, 442 F.3d 974, 977 (6th Cir. 2006). If the Index "specif[ies] more than one offense guideline for" the defendant's offense of conviction, "the court will determine which of the referenced guideline sections is most appropriate for the offense conduct charged." U.S.S.G. § 1B1.2, cmt. n.1. For § 1951 offenses, the Index lists both the § 2B3.2 and § 2B3.3 Guidelines, meaning that the district court needed to determine which Guideline was most appropriate for Defendant's crime.

The district court looked to our opinion in *United States v. Douglas* to correctly determine that § 2B3.2 applied. In *Douglas*, two union representatives at a General Motors plant were convicted of conspiracy to improperly demand things of value and wrongful use of their labor positions after they inappropriately pressured GM to hire unqualified relatives of union members. 634 F.3d at 856-57. The district court calculated the defendants' sentences using § 2B3.3, and the government appealed, arguing that the court should have used § 2B3.2. *Id.* at 857. We agreed with the government and established a framework for delineating § 2B3.3 "blackmail" offenses from § 2B3.2 "extortion" offenses. *See id.* at 862. We opined that § 2B3.3 blackmail "is defined as threatening to reveal a violation of federal law unless money or some other item of value is given" and that "[t]hese types of threats involve making public an

[2]Because all of the counts were grouped for purposes of sentencing, the district court used "the highest offense level of the counts in the group" to calculate the sentence. *United States v. Wolfe*, 309 F.3d 932, 933 (6th Cir. 2002). Here, § 1951 had the highest offense level and thus served as the basis for sentencing.

established fact" or "revealing *that which already exists*." *Id.* (emphasis added). By contrast, § 2B3.2 extortion "contemplates extortion by force or threat of injury or *serious damage*." *Id.* (emphasis in original). Unlike blackmail, "[t]hese types of threats involve attacks upon more 'innocent' victims who have in no way brought upon themselves any harm." *Id.* We thus concluded that § 2B3.2 was the appropriate Guideline for the union representatives' offenses because they had threatened serious damage: "an indefinite continuance of the strike" that would cause the GM plant to lose "millions of dollars" a day. *Id.* at 863.

Applying *Douglas* to the particular facts here, § 2B3.2 is the appropriate Guideline for Defendant's offense. B.G. was innocent of any wrongdoing until Boyd, as Jad, ensnared B.G. in his scheme by contacting him on Plenty of Fish. Defendant's threats to reveal the messages between B.G. and Jad were only possible because Defendant created and entrapped B.G. in a sexual extortion scheme entirely of Defendant's own making. Defendant thus did not threaten to "mak[e] public an established fact" as to B.G. that existed independently of the extortion scheme as is typical of a § 2B3.3 blackmail crime. *Id.* Rather, his actions more closely track a § 2B3.2 extortion crime because B.G. had committed no independent wrongful act until encountering Defendant.

Defendant argues that § 2B3.3 should apply because B.G. was no innocent victim, but a perpetrator of sexual exploitation of a child. Defendant is correct that B.G. may have engaged in illegal activity by exchanging sexually explicit messages with "Jad" after he learned that "she" was 15. But it remains the case that when Defendant initially found B.G., he was innocent of any misdeeds or crimes. And *Douglas* does not teach that the victim needs to be innocent of *any* wrongdoing for § 2B3.2 to apply. There, the union representative defendants threatened to prolong a strike at the GM plant unless GM acceded to their demands, and a GM official relented. *Douglas*, 634 F.3d at 857. The fact that the official acquiesced to the improper demands to end the strike—thus arguably engaging in wrongful dealing—did not prevent the defendants from being sentenced under § 2B3.2. *See* 29 U.S.C. § 186(a).

Defendant also claims that § 2B3.3 is the appropriate Guideline because he made no threats of violence to person or property. *See* U.S.S.G. § 2B3.3, cmt. n.1 ("This section applies only . . . where there clearly is no threat of violence to person or property."). This argument also fails. Section 2B3.2 covers crimes involving "[e]xtortion by [f]orce or [t]hreat of [i]njury *or [s]erious [d]amage*," and specifies that certain enhancements apply *if* the offense involved physical threats. U.S.S.G. § 2B3.2(b)(1), (3) (emphasis added). The Guideline's commentary further explains that the defendant's "threat" can be "to injure a person or physically damage property, *or any comparably serious threat*, such as to drive an enterprise out of business." U.S.S.G. § 2B3.2, cmt. n.2 (emphasis added). Section § 2B3.2 thus makes clear that it contains no physical injury requirement. Our precedent confirms this view. In *Douglas*, where we determined that § 2B3.2 was the appropriate Guideline, the union representative defendants threatened only economic damage (to prolong a strike). We also affirmed the application of § 2B3.2 in *United States v. Williams* where a defendant was convicted of violating the Hobbs Act after he attempted to extort money from a real estate developer in exchange for the local sheriff's support of a rezoning initiative that the developer needed for a building project. 952 F.2d 1504, 1507-12 (6th Cir. 1991). Like *Douglas*, that case involved no threats of violence to person or property, but we affirmed the district court's application of § 2B3.2. We reasoned that the defendant's threat "that the developers[' project was] 'dead'" if they did not pay up constituted extortion under § 2B3.2. *Id.* at 1514. We thus see no error with the district court's use of § 2B3.2 in the instant case; Defendant's threats to damage B.G.'s relationship with his family, humiliate him publicly, and jeopardize his income by sending the messages to his job constitute sufficiently "serious damage" under § 2B3.2.

Accordingly, we affirm the district court's use of § 2B3.2 to calculate Defendant's base level offense.

B. Sentencing Enhancements

Defendant next argues that the district court made a procedurally unreasonable error in applying the U.S.S.G. § 2B3.2(b)(3)(A)(i) and (b)(4)(C) enhancements to his sentence. U.S.S.G. § 2B3.2(b)(3)(A)(i) applies a 7-point enhancement "[i]f a firearm was discharged" during the defendant's crime. U.S.S.G. § 2B3.2(b)(4)(C) applies a 6-point enhancement "[i]f any victim sustained . . . Permanent or Life-Threatening Bodily Injury" during the crime. But where, as here, a defendant receives both enhancements, they cannot collectively increase the defendant's offense level by more than 11. *See id.* § 2B3.2(b)(4). We agree that the district court's application of these enhancements was procedurally unreasonable and thus reverse and remand to the district court for resentencing.

A sentence is procedurally unreasonable if it is marked by "significant procedural error." *Gall v. United States*, 552 U.S. 38, 51 (2007). Improperly calculating the Guidelines range, including by misapplying sentence enhancements, constitutes a significant procedural error. *See id.*; *United States v. Shields*, 664 F.3d 1040, 1043 (6th Cir. 2011). Because Defendant objected to the application of the enhancements at sentencing, we apply abuse of discretion review. *United States v. Adams*, 124 F.4th 432, 438 (6th Cir. 2024). "[A] district court abuses its discretion when it . . . improperly applies the law." *United States v. Washington*, 584 F.3d 693, 695 (6th Cir. 2009).

Under our precedent in *United States v. Hill*, 381 F.3d 560 (6th Cir. 2004), the district court abused its discretion by applying the enhancements to Defendant's sentence. In *Hill*, a defendant robbed a bank while pretending to be armed, and a security guard shot him. *Id.* at 561. Based on the guard's use of his firearm, the district court applied the § 2B3.1(b)(2)(A) firearm enhancement, which, like § 2B3.2(b)(3)(A)(i), increases a defendant's offense level by 7 points "[i]f a firearm was discharged" during the crime. U.S.S.G. § 2B3.1(b)(2)(A). On appeal, we reversed, rejecting the government's argument that the enhancement should apply "because [its] language is written in the passive voice" and does not specify who must discharge the firearm. *Id.* at 562. Instead, we looked to § 1B1.3, which instructs that, to determine which Guidelines cover a defendant's offense, the district court must consider "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or *willfully caused* by the defendant." *Hill*, 381 F.3d at 562 (quoting U.S.S.G. § 1B1.3(a)(1)(A)) (emphasis in original). We determined that, because there was no indication that the *Hill* defendant "willfully caused" the guard to shoot at him, and that such an outcome "[could not] be inferred from the conviction for the underlying offense alone," the defendant's conduct did not merit the firearm enhancement. *Id.* at 562; *see also United States v. Gordon*, 64 F.3d 281, 283 (7th Cir. 1995) ("[A] defendant cannot be said to have induced or willfully caused a guard to discharge a firearm simply because he committed the underlying offense of robbery, for that by itself shows no desire or intent regarding the firearm discharge.").

Applying *Hill*'s reasoning in the instant case, we conclude that the district court erred by enhancing Defendant's sentence under § 2B3.2(b)(3)(A)(i) and § 2B3.2(b)(4)(c) because there was no indication that Defendant "willfully caused" B.G. to commit suicide. As the Presentence Investigation Report expressly recognized, Defendant "did not direct [B.G.] to discharge a weapon or injure himself, and there was no talk of this behavior or suicide at any point in their conversation." PSR, R.81, PageID #400. Defendant was also never physically present with B.G., so he did not have the opportunity to assess whether B.G.'s behavior indicated a risk of self-harm. He also did not know that B.G. even had access to a gun. In these ways, B.G.'s suicide appears even further removed from Defendant's crime than does the guard's shooting in *Hill*. There, the defendant's actions directly caused the guard, who reasonably thought the defendant was armed and presented an imminent threat of physical harm, to discharge his gun. In the instant case, however, Defendant never introduced a threat of physical harm—his scheme was entirely focused on monetary extortion and public humiliation. Instead, B.G.'s suicide was contrary to Defendant's wishes, as he could no longer solicit money from B.G. Defendant thus did not willfully cause B.G. to discharge a firearm or to inflict harm on himself, meaning that the § 2B3.2(b)(3)(A)(i) and § 2B3.2(b)(4)(c) enhancements do not apply.

The government offers several counterarguments, none of which convince us. It first attempts to distinguish *Hill* by arguing that Defendant Boyd willfully caused the discharge of a firearm in a way that the *Hill* defendant did not. In the government's view, the goal of Defendant's extortion scheme was to "direct force" against B.G. and "push [him] to a point of total desperation." Appellee Br. at 21. It thus contends that B.G.'s decision to shoot himself was the direct result, and natural continuation, of the force Defendant exerted against B.G. in the extortion scheme, even if he did not seek the specific result of physical harm or death. This argument fails because it squarely conflicts with *Hill*. Under the government's logic, we would have to conclude that the *Hill* defendant did merit the firearm enhancement because he similarly pushed the security guard to a point of desperation, forcing him to shoot out of fear for the safety of the bank's patrons and property. But *Hill* reached the opposite conclusion: without clear indication that the defendant *willfully* caused the guard to *shoot*, the firearm enhancement was inappropriate. The mere fact that the defendant created the conditions in which the shooting was foreseeable was not enough. And, for all the reasons explained above, there is simply no indication in this case that Defendant *willfully* intended to physically harm B.G.

The government offers two other theories to differentiate *Hill*. First, it argues that *Hill* held that the enhancement did not apply because only the defendant was on the receiving end of the firearm discharge. Here, however, B.G. was both the victim of the crime and the victim of the shooting. This fact might help demonstrate willful intent under a different set of facts, but it cannot overcome the lack of any evidence in this case indicating that Defendant sought, encouraged, or willfully caused any *physical* harm to B.G. The government also halfheartedly argues that the application of the enhancements is logically consistent with the purpose of § 2B3.2 to assess the severity of the "extortion by force or threat of injury or serious damage." U.S.S.G. § 2B3.2 (citation modified). By contrast, it claims, the application of the firearm enhancement in *Hill* was illogical because the Guideline under which that defendant was charged, § 2B3.1 (for robbery crimes), is not meant to punish suicide. This argument fails because § 2B3.2 is also not meant to punish suicide. The government might have a point if a crime needed to include a threat of physical force to fall under § 2B3.2, but for the reasons explained in the preceding section, that is not the case.

In support of its position that the enhancements apply, the government identifies only one case that, in addition to being out-of-Circuit, is inapposite. In *United States v. Roberts*, a law enforcement officer discharged his gun to empty it after the defendant's accomplice tried to wrestle it from his control. 203 F.3d 867, 868 (5th Cir. 2000). The Fifth Circuit held that the defendant's conduct "induced and willfully caused" the deputy to fire the gun, and that the § 2B3.1(b)(2)(A) enhancement thus applied. *Id.* at 870. *Robert* does not help the government's case. There, the officer discharged his gun in direct response to the immediate risk of physical danger created by the defendant. As we explained above, Defendant Boyd's conduct—although egregious—simply did not force the discharge of a firearm in the same way: he never physically threatened B.G., never encouraged the use of force, and did not even know that B.G. had access to a gun.

Accordingly, we conclude that it was contrary to our precedent in *Hill* and procedurally unreasonable for the district court to apply the U.S.S.G. § 2B3.2(b)(3)(A)(i) and (b)(4)(C) enhancements to Defendant's sentence. "When the district court misapplies a sentencing enhancement, we must remand for resentencing unless we are 'certain' the error was harmless." *United States v. Alvarado*, 95 F.4th 1047, 1053 (6th Cir. 2024) (quoting *United States v. McCarty*, 628 F.3d 284, 294 (6th Cir. 2010)). Since the enhancements raised Defendant's offense level by 11 point, and there is no indication that the court would have "imposed the same sentence notwithstanding [the] enhancement[s]," the error was not harmless. *Id.* at 1056. We thus reverse the district court's application of the enhancements, and remand for the court to resentence Defendant without the enhancements.

C. Substantive Reasonableness

Lastly, Defendant challenges the substantive reasonableness of his 272-month sentence. He contends that this sentence is unreasonable for two reasons: (1) the sentence term is arbitrary; and (2) the district court put an inappropriate amount of weight on certain sentencing factors in deciding to upward vary his sentence. We address each argument in turn, again applying abuse of discretion review. *See United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). Sentences are substantively unreasonable when "the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor." *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008). Because we reverse and remand for resentencing based on the district court's misapplication of the sentencing enhancements, we will not decide the substantive reasonableness of the specific term imposed by the district court. Yet the same issues might arise on remand during Boyd's resentencing. We thus will note that neither of the points raised by Defendant render his sentence substantively unreasonable.

First, Defendant argues that the district court chose his 272-month sentence term arbitrarily because it stated that it would vary the 29-point offense level upward by two points, for a maximum term of 235 months. According to Defendant, this leaves the additional 37 months of his term unexplained. Defendant's argument is mistaken. Reading the sentencing transcript in its full context, it is clear that the district court varied the offense level upward by two points for the Counts 1 and 3-7 convictions and imposed a 212-month term of imprisonment for those charges. It then imposed a separate 60-month term of imprisonment for the Count 2 stalking charge, resulting in a total term of 272 months. *See* Sentencing Tr., R.97, PageID #951 ("[I]t's the judgment of the Court that the defendant . . . is hereby committed to the custody of the Bureau of Prisons for a term of 212 months on Count 1 and Counts 3 through 7, those terms to be served concurrently. The Court imposes a consecutive sentence of 60 months on Count 2 2 . . . Accordingly, the total term of imprisonment is 272 months."). This sentence followed the recommendations of the Presentence Investigation Report, which recommended a 60-month consecutive term on the Count 2 charge. *See* PSR, R.81, PageID #401 (recommending a 60-month sentence on Count 2 "consecutive to Cts. 1 and 3 – 7").

It is true that the PSR "grouped" all seven of Defendant's counts together for sentencing purposes. *See* U.S.S.G. § 3D1.2 ("All counts involving substantially the same harm shall be grouped together into a single Group" for the purposes of sentencing). The PSR's calculation of the overall group offense at 29 (which carries a maximum sentence of 188 months) may be somewhat odd considering that it also recommended stacking the Counts 1 and 3-7 sentence with the 60-month Count 2 sentence.[3] But oddities aside, the district court's sentencing decision was not substantively unreasonable because "there is no obstacle to stacking a defendant's sentences for grouped offenses." *Jenkins v. United States*, 394 F.3d 407, 411-12 (6th Cir. 2005) (quoting *United States v. Chase,* 296 F.3d 247, 251 (4th Cir. 2002)); *see also United States v. Garcia-Torres,* 341 F.3d 61, 75 (1st Cir. 2003) ("[The] grouping of [defendant's] two counts pursuant to § 3D1.2 does not preclude the imposition of consecutive sentences on each of them."). And judges have "long been understood to have discretion to select whether the sentences they impose will run concurrently or consecutively." *Setser v. United States*, 566 U.S. 231, 236 (2012). So long as the court "makes generally clear the rationale under which it has imposed the consecutive sentence," it does not abuse its discretion. *United States v. Johnson*, 553 F.3d 990, 998 (6th Cir. 2009) (internal quotation marks omitted). For the reasons explained below, the district court clearly explained its decision to vary Defendant's sentence upward. We thus conclude that there was no error in the district court's approach to varying and choosing Defendant's sentence.

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[3]Because the PSR used the offense level of 29 (without the upward variance applied), the PSR's total recommended time of imprisonment was 248 months (188 + 60 months).

Defendant next argues that the court placed an unreasonable amount of weight on the fact that B.G. committed suicide in deciding to vary his sentence upward. 18 U.S.C. § 3553(a) requires the district court to balance several factors in deciding what sentence to impose. *See United States v. Williams*, 436 F.3d 706, 708 (6th Cir. 2006), *overruled on other grounds by Rita v. United States*, 551 U.S. 338, 347 (2007). A sentence may be substantively unreasonable if "the court placed too much weight on some of the § 3553(a) factors and too little on others." *Rayyan*, 885 F.3d at 442.

Defendant's argument fails because the record demonstrates that the district court thoroughly weighed multiple § 3553(a) factors at sentencing and did not place any undue weight on the fact that B.G. committed suicide. First, the court addressed the § 3553(a)(1) factor, which asks the court to consider "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). It noted Defendant's extensive criminal history and multitudinous prison misconduct violations. Indeed, the court described Defendant's criminal record—which included a 2007 manslaughter conviction, a 2009 conviction for assaulting a prison employee while incarcerated on the manslaughter charge, and a 2016 conviction for participating in a prison riot with a plan to kill two men, also while incarcerated—as "[o]ne of the worst . . . [it had] seen." Sentencing Tr., R.97, PageID #949. The court also noted that Defendant had committed many misconduct offenses while incarcerated, some of which involved violence.

The court also considered § 3553(a)(2)(C), the need for the sentence imposed "to protect the public from further crimes of the defendant," and § 3553(a)(2)(B), the need "to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(C), (B). It emphasized that Defendant "[was] a very dangerous person" who was "a danger to anybody he interact[ed] with" and "need[ed] to be placed in a facility for the remainder of his life." Sentencing Tr., R.97, PageID #950. With respect to the deterrence factor, the court stated that Defendant needed to "be specifically deterred" and recognized that "[n]o sentence that he'[d] gotten from any judge ha[d]" yet "deterred him specifically." *Id.* The court also noted the need for "general deterrence of others who might contemplate similar activity, especially while . . . incarcerated." *Id.*

Defendant claims that the district court committed its substantive error while evaluating the § 3553(a)(2)(A) factor, the need for the sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). In its discussion of this factor, the court stated that "[t]he circumstances of this offense are grave indeed, resulting in the death of the individual who was the subject matter of the extortion by the defendant, and, accordingly, the nature and circumstances of the offense call for a very significant sentence." Sentencing Tr., R.97, PageID #949. According to Defendant, this statement demonstrates that the court committed a substantively unreasonable error for two related reasons: (1) it was improper for the court to consider B.G.'s suicide because the suicide was not a reasonably foreseeable outcome of Defendants actions; and (2) to the extent the court could and did consider the suicide, it placed an undue amount of weight on that fact in deciding to upward vary Defendant's sentence.

Without definitively deciding whether it was appropriate for the district court to specifically factor in B.G.'s suicide, we conclude that the district court did not place undue weight on that fact. The district court conducted a thorough and fulsome analysis of multiple § 3553 factors other than the § 3553(a)(2)(A) "seriousness" factor where it referenced B.G.'s suicide. And we have consistently held that these other factors—criminal history, public protection, and deterrence—are all appropriate factors for the district court to rely on in deciding to upward vary a sentence. *See, e.g.*, *United States v. Lee*, 974 F.3d 670, 673 (6th Cir. 2020); *United States v. Mitchell*, 107 F.4th 534, 542 (6th Cir. 2024). That the court made a single mention of B.G.'s suicide during its sentencing colloquy does not demonstrate that it put undue weight on that fact. Based on the district court's discussion at sentencing, we conclude that the district court "provide[d] a sufficiently compelling justification" for the two-point upward variance, justified based on its assessment of the § 3553 factors. *Lee*, 974 at 676 (cleaned up).

Again, because we reverse and remand for resentencing due to the district court's error in applying the sentencing enhancements, we do not affirm that 272-month sentence, which may change upon resentencing. However, we do conclude that neither of Defendant's substantive reasonableness arguments would succeed.

III. CONCLUSION

For the reasons set forth above, we **AFFIRM** the district court in part, and **REVERSE** and **REMAND** for resentencing in accordance with this opinion. Specifically, we instruct the district court to resentence Defendant without applying the U.S.S.G. § 2B3.2(b)(3)(A)(i) and (b)(4)(C) sentencing enhancements.

CONCURRENCE

MURPHY, Circuit Judge, concurring. I agree with Judge Clay that we must remand this case for the district court to resentence Glenn Boyd because the court misapplied two sentencing enhancements in U.S.S.G. § 2B3.2. One of those enhancements increases a defendant's offense level "[if] a firearm was discharged," U.S.S.G. § 2B3.2(b)(3)(A)(i), while the other increases a defendant's offense level "[i]f any victim sustained" a "Permanent or Life-Threatening Bodily Injury," *id.* § 2B3.2(b)(4)(C). The district court held that these two enhancements applied because Boyd's extortion victim (B.G.) discharged a gun to kill himself. As Judge Clay explains, however, B.G.'s suicide did not qualify as "relevant conduct" that a district court may use when determining a defendant's offense level under U.S.S.G. § 1B1.3(a)(1)(A). That subparagraph tells a court that it may consider "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or *willfully caused* by the defendant[.]" *Id.* (emphasis added). Given the "willfully caused" language, we have read this subparagraph narrowly to require the defendant to have intended the relevant "act[]" or "omission[]" (here, B.G.'s act of shooting himself). *Id.*; *see United States v. Hill*, 381 F.3d 560, 562–63 (6th Cir. 2004). *Hill* controls this case.

I write to make two additional points. *First*, I might have agreed with the government's belated back-up argument that § 2B3.2(b)(4)(C)'s bodily injury enhancement could still have applied for a different reason. Another paragraph in § 1B1.3 tells district courts that they may consider "*all harm* that *resulted from* the acts and omissions specified in subsection[] (a)(1)"—that is, the "acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant[.]" U.S.S.G. § 1B1.3(a)(1), (3) (emphases added). Seemingly all would agree that Boyd's efforts to extort B.G. qualify as "acts" that the district court may consider under § 1B1.3(a)(1). And seemingly all would agree that B.G.'s suicide qualifies as a "harm" under § 1B1.3(a)(3) (as well as a "bodily injury" under § 2B3.2(b)(4)).

Thus, whether B.G.'s suicide counts as "relevant conduct" under § 1B1.3(a)(3) depends on whether it "resulted from" Boyd's extortion efforts. The phrase "result from" likely incorporates "a requirement of actual causality." *Burrage v. United States*, 571 U.S. 204, 211 (2014). In other words, the phrase likely requires the government to show but-for causation: that the harm (here, B.G.'s suicide) would not have arisen *but for* the relevant acts (here, Boyd's extortion). *See id.*; *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346–47 (2013). And this phrase may—or may not—require the government to show proximate causation: that B.G.'s suicide had a "sufficient connection" to Boyd's extortion. *Paroline v. United States*, 572 U.S. 434, 444 (2014); *compare id.* at 444–48, *with United States v. Jeffries*, 958 F.3d 517, 520–23 (6th Cir. 2020).

Here, I suspect that the district court could have found any of these causation elements met. B.G. likely would not have taken his life "but for" Boyd's extortion. *Nassar*, 570 U.S. at 347. And any proximate-causation element likely would include some "foreseeability" component (among other potential components). *Paroline*, 572 U.S. at 445. Yet it was likely "reasonably foreseeable" that Boyd's repeated threats to destroy B.G.'s life might lead B.G. to commit suicide—just as it was reasonably foreseeable that a bank teller might injure herself when dropping to the ground during a bank robbery. *United States v. Bellis*, 2024 WL 1212859, at *3 (6th Cir. Mar. 21, 2024) (discussing *United States v. Fitzwater*, 896 F.2d 1009, 1012 (6th Cir. 1990)).

But the majority opinion properly declines to address this issue. The government did not cite § 1B1.3(a)(3) when arguing for the enhancement in the district court. Sent. Tr., R.97, PageID 937. And the government's brief on appeal mentioned this paragraph only once in passing. Appellee's Br. 18. The government did invoke § 1B1.3(a)(3) more fulsomely in a supplemental letter and when questioned at oral argument. But that advocacy came too late. It forfeited any reliance on this distinct paragraph by failing to adequately brief it in the district court or on appeal. *See Blick v. Ann Arbor Pub. Sch. Dist.*, 105 F.4th 868, 884 (6th Cir. 2024); *Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1012 (6th Cir. 2022). Indeed, we still do not know the government's position on the causal connection that § 1B1.3(a)(3)'s "resulted from" language requires. Does it require just but-for causation? Or proximate causation too? The government did not say. We thus can save these questions for another day when the parties properly brief them. But I would not read our opinion as rejecting § 1B1.3(a)(3)'s application to this case's facts on the merits.

Second, we have rejected Boyd's substantive-reasonableness challenge without opining on the propriety of the ultimate sentence or on whether the district court could emphasize B.G.'s suicide in the sentencing calculus. It is hard for me to see why it could not. After all, Congress placed "[n]o limitation . . . on the information concerning the background, character, and conduct of a" defendant that a district court may "consider for the purpose of imposing an appropriate sentence." 18 U.S.C. § 3661. And B.G.'s suicide was part of the "circumstances of the offense" under any ordinary understanding of that phrase. *Id.* § 3553(a)(1). As I have said, I would also find the suicide a "reasonably foreseeable" result of Boyd's crimes. *Bellis*, 2024 WL 1212859, at *3. When combined with Boyd's violent criminal record, then, I agree with the district court that his current offenses "call for a very significant sentence." Sent. Tr., R.97, PageID 949.

If anything, our decision to overturn the two enhancements may well make an upward variance even more appropriate. On appeal, Boyd criticized the district court for allegedly "double counting" B.G.'s suicide by using it first to impose those substantial enhancements and then to impose an upward variance. Now, however, the district court would risk not taking B.G.'s suicide into account *at all* unless it considers this tragic fact when exercising its discretion to identify the appropriate sentence. Nothing we say here bars it from doing so. And besides, the district court has some discretion to deviate from the definition of "relevant conduct" in § 1B1.3 if it believes that the definition is too narrow as a "policy" matter. *United States v. Herrera-Zuniga*, 571 F.3d 568, 585 (6th Cir. 2009); *see Spears v. United States*, 555 U.S. 261, 265–66 (2009) (per curiam).

With this understanding of the majority opinion, I concur in full.