PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4051

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SELAH JALEN STREET,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:24-cr-00139-D-RJ-1)

Argued: September 16, 2026 Decided: November 23, 2026

Before RUSHING, Circuit Judge, KEENAN, Senior Circuit Judge, and Susan C. RODRIGUEZ, United States District Judge for the Western District of North Carolina, sitting by designation.

Affirmed by published opinion. Judge Rodriguez wrote the opinion, in which Judge Rushing and Judge Keenan joined.

ARGUED: Snayha Murthy Nath, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. William Ellis Boyle, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** G. Alan DuBois, Federal Public Defender, Jaclyn L. Tarlton, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. Daniel P.

Bubar, Acting United States Attorney, David A. Bragdon, Assistant United States Attorney, Kristine L. Fritz, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

RODRIGUEZ, District Judge:

Selah Street appeals the district court's application of a two-point sentencing enhancement under U.S.S.G. § 3C1.2 for reckless endangerment during flight from law enforcement. The record supports the district court's findings that Street recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer. We, therefore, affirm.

I.

On August 3, 2023, officers with the Raleigh Police Department's Gang Suppression Unit observed Street in a residential area with a handgun streaming live video on social media.[1] When police responded around 10:00 p.m., Street fled with a gun in his hand, over two fences in adjoining yards, with underbrush and briars in his path of flight.

The officers chased Street with their weapons drawn and repeatedly commanded that Street drop his gun. The officers apprehended Street without a struggle after he fell. By that time, Street no longer had a gun. Officers quickly searched the area and found the gun among the leaves between the first and second fences. The gun was loaded with a bullet in the chamber.

Street later pled guilty to possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1). Street objected to a two-point enhancement contained in the Presentence Investigation Report under U.S.S.G. § 3C1.2 for reckless endangerment

[1] Street was on location monitoring at the time because he was on state post-release supervision.

during flight. He argued his conduct was mere armed flight and insufficient to warrant the enhancement. The Presentence Investigation Report calculated the advisory guideline range at 41 to 51 months with the enhancement or, without the enhancement, at 33 to 41 months.

The district court found Street's conduct was more than mere instinctive armed flight and applied the two-point sentencing enhancement under U.S.S.G. § 3C1.2, over Street's objection.[2] Street requested a downward variance, and the Government requested a sentence of 96 months. The district court considered the factors under 18 U.S.C. § 3553(a), explained why it found an upward variance appropriate, and sentenced Street to 60 months imprisonment. After announcing the 60-month sentence, the district court stated, "even if I had sustained the objection of the defense, I would impose the same sentence as an alternative variant sentence[.]" J.A. 109.

Street appealed. On appeal, Street argues the district court improperly applied the enhancement under U.S.S.G. § 3C1.2 and made clearly erroneous factual findings.

II.

This Court reviews a sentence for procedural reasonableness "under a deferential abuse-of-discretion standard." *United States v. Dennings*, 922 F.3d 232, 235 (4th Cir.

[2] Following the district court's ruling on the enhancement and its calculation of the advisory Guidelines range, the Government initially moved for an upward departure (prior to the U.S.S.G. changes) based on Street's criminal history. The district court continued the sentencing hearing to allow for proper notice of this request. At the continued hearing, the district court declined to depart upward, but determined a nine-month upward variance was appropriate after considering the factors under 18 U.S.C. § 3553(a).

2019), *as amended* (Apr. 25, 2019) (quoting *Gall v. United States*, 552 U.S. 38, 41 (2007)). When considering the application of sentencing enhancements, we review the district court's factual findings for clear error, and if "the issue turns primarily on the legal interpretation of the guidelines, our review is *de novo*." *United States v. Carter*, 601 F.3d 252, 254 (4th Cir. 2010) (quoting *United States v. Nale*, 101 F.3d 1000, 1003 (4th Cir. 1996)) (internal quotation marks omitted).

"We may not reverse the district court's findings of fact on this score 'simply because we would have decided the case differently.'" *United States v. Barnett*, 48 F.4th 216, 220 (4th Cir. 2022) (quoting *United States v. Manigan*, 592 F.3d 621, 631 (4th Cir. 2010)). "Rather, we may find clear error only if, on the entire evidence, we are left with the definite and firm conviction that a mistake has been committed." *Barnett*, 48 F.4th at 220 (internal quotation marks omitted). In other words, if "the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it." *Id.* (quoting *United States v. Wooden*, 887 F.3d 591, 602 (4th Cir. 2018)) (internal quotation marks omitted). Procedural error requires reversal, unless the error was harmless. *United States v. Nixon*, 130 F.4th 420, 428 (4th Cir. 2025) (quoting *United States v. Gomez-Jimenez*, 750 F.3d 370, 379 (4th Cir. 2014), *as corrected* (Apr. 29, 2014)).

A.

Under the Sentencing Guidelines, a two-level enhancement applies if the "defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer." U.S.S.G. § 3C1.2 (2024). To apply

the enhancement, the Government must establish by the preponderance of the evidence that the defendant (1) recklessly, (2) created a substantial risk of death or serious bodily injury, (3) to another person, (4) in the course of fleeing from a law enforcement officer. *Id.*; *United States v. Henderson*, 88 F.4th 534, 536 (4th Cir. 2023).

Conduct is reckless when the "defendant was aware of the risk created by his conduct and the risk was of such a nature and degree that to disregard that risk constituted a gross deviation from the standard of care that a reasonable person would exercise in such a situation." U.S.S.G. §§ 2A1.4 cmt. n.1, 3C1.2 cmt. n.2 (2024). The enhancement applies based on the risk the defendant creates and does not require actual physical harm. *Dennings*, 922 F.3d at 236. The risk also must be to "[a]nother person," meaning "any person, except a participant in the offense who willingly participated in the flight." U.S.S.G. § 3C1.2 cmt. n.4. The risk to another person, then, includes risk to law enforcement or others, but excludes risk to the defendant. *Dennings*, 922 F.3d at 238; *United States v. Shivers*, 56 F.4th 320, 325 (4th Cir. 2022); *United States v. Washington*, 80 F. App'x 850, 851 (4th Cir. 2003). The recklessly created risk must be "in the course of fleeing from a law enforcement officer," which "is to be construed broadly" and includes preparation for flight as well as conduct in the course of resisting arrest. U.S.S.G. § 3C1.2 cmt. n.3.

With these principles in mind, we consider Street's challenge to the district court's application of U.S.S.G. § 3C1.2. Street contends the district court incorrectly applied the enhancement because his conduct was nothing more than mere instinctive armed flight like

in *United States v. Shivers*, 56 F.4th 320 (4th Cir. 2022), and that the record is infected with clearly erroneous factual findings. We address Street's arguments in turn.

It is true that the enhancement may not be based on mere instinctive armed flight alone. *Shivers*, 56 F.4th at 326; *Henderson*, 88 F.4th at 538; *United States v. John*, 935 F.2d 644, 648 (4th Cir. 1991). Instead, this Court has held the Government must show "flight-plus-something more." *Dennings*, 922 F.3d at 237; *Henderson*, 88 F.4th at 538. This is because the enhancement addresses active, willful behavior rather than passive or instinctive conduct. *Dennings*, 922 F.3d at 237; *John*, 935 F.2d at 648 ("[E]ndangering others during flight or in the course of resisting arrest involves active, willful behavior; in contrast, mere flight or disagreeableness during an encounter involves more passive or instinctive conduct.").

But as this Court recognized in *United States v. Dennings*, 922 F.3d 232 (4th Cir. 2019), there is limited published case law on the scope of the enhancement under U.S.S.G. § 3C1.2 and what is required to show the requisite "something more." In *Dennings*, police responded to reports of a scuffle involving the discharge of a firearm. *Dennings*, 922 F.3d at 234. Dennings fled from police and ignored repeated instructions from the officer to stop, while his "right arm and hand were moving in a way that suggested he had or was reaching for something." *Id.* at 234, 237-38. Dennings fell, the officer landed on top of him, and Dennings was "hesitant to relinquish control of" his right arm. *Id.* at 234, 237. Police then discovered a loaded firearm in his jacket pocket. *Id.* Under these facts, this Court held the Government demonstrated "flight-plus-something more" and affirmed the district court's application of the enhancement. *Id.* at 238-39.

This Court has also addressed factual circumstances giving rise to the "something more" necessary to apply the enhancement in unpublished opinions, including engaging in a struggle with police officers, repeatedly attempting to remove an item from a pocket during armed flight or apprehension, and running through a crowded parking lot and discarding a firearm in a heavily trafficked area. *Henderson*, 88 F.4th at 538 (citing *United States v. Williams*, 278 F. App'x 279, 280 (4th Cir. 2008); *Washington*, 80 F. App'x at 850-51; *United States v. Grate*, 81 F. App'x 451, 453 (4th Cir. 2003)).

Meanwhile, since *Dennings,* this Court has declined to apply the enhancement where the Government has failed to introduce evidence beyond mere flight with a loaded firearm. *Henderson*, 88 F.4th at 538; *Shivers*, 56 F.4th at 326. In *Shivers*, police responded to a robbery, Shivers fled, and a foot chase ensued in a downtown area. *Shivers*, 56 F.4th at 323. During pursuit, an officer observed Shivers discard a gun in the street, and eventually Shivers surrendered. *Id.* On appeal, this Court found the district court clearly erred in applying the enhancement because the record lacked evidence of "something more" than mere instinctual flight. *Id.* at 326-27.

Shivers recognized the outcome might have been different if the Government met its burden of establishing facts beyond a presentence investigation report to support the enhancement. It further explained that "[h]ad the officer testified to this effect, that may have been enough to sustain the enhancement depending on the full context of that testimony." *Id.* at 325 n.2. And, this Court made clear that "[i]n most cases, it should not be difficult for the Government to present sufficient evidence to justify the imposition of the enhancement, but the record [in *Shivers*] simply lack[ed] such evidence." *Id.* at 327.

Similarly, this Court found in *United States v. Henderson*, 88 F.4th 534, 536 (4th Cir. 2023), that the Government failed to meet its burden in establishing "something more" than mere armed flight. *Henderson*, 88 F.4th at 538-39. Police responded and Henderson fled while armed with a rifle. *Id.* at 535. Officers later located Henderson behind a shed a short distance away and found the rifle hidden under a vehicle parked on the roadway. *Id.* But, like *Shivers*, the record lacked evidence beyond mere armed flight, including who apprehended Henderson, how the firearm got to the vehicle, the conditions surrounding that discovery, or distances between the area of the offense, the shed, and the vehicle. *Id.* at 538-39.

This decision now adds to the catalog of decisions addressing the scope of the enhancement's application and what conduct constitutes "flight-plus-something more." We do not find clear error here because the Government met its burden. At the sentencing hearing, the Government called Officer Dry, a responding officer on the night in question. Officer Dry testified that when police arrived, Street "decided to take off running" with the gun in his hand, over two fences, with underbrush and briars in the path of flight. J.A. 61-67. The officers followed Street through the same area and over the same fences, weapons drawn. The officers repeatedly commanded that Street drop his gun. Street had discarded the weapon, but not in view of the officers. The officers did not realize that Street no longer had the weapon in his hand until they apprehended him. When the officers located the gun, it was loaded with a bullet in the chamber.

The Government also played excerpts of the body worn camera footage from that night showing Street's flight from law enforcement, and Street introduced the remaining

body worn camera footage. The district court took judicial notice, at Street's request, that "the State of California requires that guns pass a safety drop test in order to be sold in the California market" and the gun Street possessed "is on the California list of such an approved gun." J.A. 68-69.

Street takes aim at the district court's finding that the gun with a bullet in the chamber could have accidentally discharged. Appellant's Br. at 22-23. Street argues the district court clearly erred by ignoring his introduction of evidence that the gun passed a drop test, and contends the district court imputed its own personal views to reach its findings.[3]

This argument misses the mark. The district court found "as described in *Dennings*, [Street's] behavior carried an obvious risk that the situation might have escalated to the point that a firearm was used or discharged even accidentally." J.A. 78. The officers could not see if Street discarded his weapon, while also keeping their weapons drawn and repeatedly commanding Street to drop his weapon as they followed Street over fences through a residential neighborhood. Indeed, it was Street's own reckless conduct that created an obvious risk of death or serious bodily injury to another person that his loaded gun or any gun drawn by the officers—not knowing the status of Street's gun—would be used or accidentally discharged, regardless of whether the gun passed a drop test. *See e.g., Dennings*, 922 F.3d at 238; *Carter*, 601 F.3d at 255-56. As Street would have it, the

[3] The district court's comments were made during a colloquy with counsel before it ruled, and Street is unable to demonstrate that the comments impacted the ruling.

Government would be required to call an expert to testify that the defendant's conduct created a substantial risk of death or serious bodily injury. We do not impose such a requirement now. To hold otherwise would heighten the Government's burden beyond what is required to apply the enhancement.[4] *Dennings*, 922 F.3d at 238 (holding the district court did not err in applying § 3C1.2 enhancement where defendant's behavior carried "an obvious risk"); *Carter*, 601 F.3d at 255-56 (finding risk "obvious" where a stranger enters a residence without permission); *Williams*, 278 F. App'x at 280-81 (affirming application of the enhancement because "[a] struggle in which all the parties are armed carries an obvious risk that the struggle might escalate to the point that a firearm is used, or discharges accidentally.").

Nor, as Street contends, did the district court erroneously find Street made any movements other than running from law enforcement when it stated the officers were unable to determine "the intent behind [Mr. Street's] movements" during his flight. Appellant's Br. at 22 (quoting J.A. 77) (alteration in original). In assessing recklessness, the district court explained the officers "had no way of knowing" whether Street would "turn around, take a position and shoot" or what movements Street would or would not make in flight. J.A. 77-78. This is not an erroneous finding that Street made any particular movement. Rather, it is consistent with the record and body worn camera footage that officers did not know the status of Street's gun or his intentions.

[4] This is not to say an expert witness would never be required under certain circumstances. Those circumstances, however, are not present in this case. Nor should anything in our decision prevent a party from calling an expert witness, if it so chooses.

Street further argues the district court erroneously found there were bystanders in the area and in Street's flight path. Appellant's Br. at 22. But a careful reading of the record reveals the district court's single reference to bystanders was in quoting this Court's binding precedent in *Dennings*. J.A. 77 (referring to *Dennings*, 922 F.3d at 235). And the district court's finding that Street's conduct created a risk "to another person; to wit, the officers and anyone in the area and in the path of flight. You do hear other voices [on the body worn camera footage]", is supported by the record. J.A. 76. This finding was not clear error.

Considering all of this, we conclude the district court's application of the enhancement was not infected by clearly erroneous factual findings, and the Government carried its burden at sentencing to prove "flight-plus-something more." The district court properly calculated the Guidelines range and did not err in applying the enhancement under U.S.S.G. § 3C1.2.[5]

B.

Even assuming the district court did err in applying the enhancement, any error was harmless. "It is well established that we will not vacate a sentence if we determine that the district court's improper calculation of the Guidelines advisory sentencing range was harmless." *United States v. Mills*, 917 F.3d 324, 330 (4th Cir. 2019) (citing Fed. R. Crim.

[5] Nothing in our decision here changes *Shivers* or *Henderson*. In both cases, the Government's presentation of evidence fell short of the "flight-plus-something more" required to apply the enhancement. *Shivers*, 56 F.4th at 326-27; *Henderson*, 88 F.4th at 538-39.

P. 52(a)). A Sentencing Guidelines error is harmless "if the record shows that '(1) the district court would have reached the same result even if it had decided the [G]uidelines issue the other way, and (2) the sentence would be reasonable even if the [G]uidelines issue had been decided in the defendant's favor.'" *Id.* (quoting *Gomez-Jimenez*, 750 F.3d at 382) (alterations in original).

First, the district court made clear it would have imposed the same sentence even if it sustained Street's objection. *United States v. Arthur*, 160 F.4th 597, 615 (4th Cir. 2025); *Mills*, 917 F.3d at 330; *Gomez-Jimenez*, 750 F.3d at 382. The district court explained the reasons why it found an upward variance appropriate and stated it would impose the same sentence even if it sustained the objection because the sentence was "sufficient but not greater than necessary for Selah Street in light of all the 3553(a) factors." J.A. 103-11.

Second, examining the totality of the circumstances and affording due deference to the district court's decision, the district court made a detailed and individualized assessment of the § 3553(a) factors. J.A. 103-11; *Mills*, 917 F.3d at 331; *Gomez-Jimenez*, 750 F.3d at 383. It explained the reasons it found an upward variance appropriate, including Street's criminal history, ongoing conduct involving firearms, his adjustment to a previous term of supervision, the nature of the offense, the need to incapacitate, and his behavior in court. J.A. 103-11, 195; *United States v. Franklin*, 187 F.4th 168, 180-82 & n.5 (4th Cir. 2026) (stating district court must provide justification for an upward variance). The district court's analysis supports its conclusion that, even if the applicable advisory range was 33 to 41 months, a variance to 60 months was sufficient, but not greater than necessary, to accomplish the sentencing objectives. *Mills*, 917 F.3d at 331; *Arthur*, 160

F.4th at 616. In so concluding, the district court took a more measured approach with an upward variance to 60 months rather than adopting the Government's request of 96 months. We conclude Street's sentence was reasonable even if Street's objection was sustained. Any error, therefore, is harmless.

III.

We hold the district court's findings were not clearly erroneous, and the district court properly applied the sentencing enhancement under U.S.S.G. § 3C1.2. Even if there were error, such error was harmless. Therefore, the judgment of the district court is

AFFIRMED.