PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4037

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ZERION MARCOS FRANKLIN,

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-00105-D-KS-1)

Argued: January 30, 2026 Decided: August 14, 2026

Before AGEE, BENJAMIN, and BERNER, Circuit Judges.

Vacated and remanded with instructions by published opinion. Judge Benjamin wrote the majority opinion, in which Judge Berner joined. Judge Agee wrote a dissenting opinion.

ARGUED: Sandra Payne Hagood, LAW OFFICE OF SANDRA PAYNE HAGOOD, Cary, North Carolina, for Appellant. Katherine Simpson Englander, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** W. Ellis Boyle, United States Attorney, Lucy Partain Brown, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

DEANDREA GIST BENJAMIN, Circuit Judge:

Zerion Marcos Franklin was employed by the United States Postal Service in Fayetteville, North Carolina. After stolen checks were discovered during a traffic stop, Franklin was charged with one count of theft of mail matter by a postal service employee in violation of 18 U.S.C. § 1709 and one count of possession of stolen mail in violation of 18 U.S.C. § 1708. He pled guilty to both counts.

The district court calculated Franklin's Sentencing Guidelines range, imposing, among other things, a two-level firearm enhancement pursuant to *U.S. Sentencing Guidelines Manual* § 2B1.1(b)(16)(B). That section increases a defendant's total offense level "[i]f the offense involved . . . [the] possession of a dangerous weapon (including a firearm) in connection with the offense." Based on its Guidelines calculation, the district court sentenced Franklin to 48 months' imprisonment.

Franklin now appeals his sentence, arguing the district court erred in imposing the firearm enhancement. Franklin specifically argues that the Government did not meet its burden in showing that the firearm was possessed "in connection with" either of his offenses. Because the district court failed to make factual findings linking Franklin's possession of a firearm with either of his offenses, we vacate Franklin's sentence and remand for resentencing.

I.

A.

Franklin worked for the United States Postal Service at its Fayetteville mail processing annex. On June 6, 2023, Franklin was driving with Delana Bolding, a passenger in his vehicle, when police officers stopped him for a window tint violation. While conducting the stop, the officers observed drug paraphernalia in the vehicle and proceeded to search Franklin's vehicle.

That search produced 48 United States Treasury checks. The checks were not made payable to Franklin, but to individuals receiving federal tax refunds, social security benefits, and veteran benefits. Of the checks found in Franklin's vehicle, 47 of 48 checks were found in the trunk while one of the checks was found in Franklin's backpack, which was in the back seat of the car. Each of these checks had been processed through the Fayetteville mail processing annex. The check found in Franklin's backpack had been altered to reflect "Delana Leigh Bolding" as the payee. Along with the altered check, the backpack contained marijuana, a bag with marijuana residue, a syrup medicine bottle, $22,538 in United States currency, and a loaded firearm. A week later, a police report was filed by a victim for a stolen federal tax refund check for $3,947 that had been cashed in Franklin's name at Walmart.

Franklin was stopped again by police officers for a traffic violation. After a positive alert from a police canine unit, officers searched Franklin's vehicle and recovered a magnifying glass and razor blades—oft used to forge documents—as well as another United States Treasury check. Soon after the second traffic stop, the police department

obtained and executed a search warrant at Franklin's home. At Franklin's home, officers discovered two additional United States Treasury checks that had been altered to reflect a new payee.

All in all, Franklin was responsible for 51 stolen checks for an actual loss of $3,947, and an intended loss of $767,485.39.

B.

Franklin was indicted on two counts: one count of theft of mail matter by postal service employee in violation of 18 U.S.C. § 1709 and one count of possession of stolen mail in violation of 18 U.S.C. § 1708. He pled guilty to both counts.

The United States Probation Office prepared a presentence report (PSR) to assist the district court at Franklin's sentencing. In calculating Franklin's offense level, the PSR applied, among other things, a firearm enhancement pursuant to USSG § 2B1.1(b)(16)(B) (the "firearm enhancement"). That subsection provides for a two-level enhancement "[i]f the offense involved . . . [the] possession of a dangerous weapon (including a firearm) in connection with the offense." And according to the PSR, Franklin's offense involved the possession of a dangerous weapon in connection with the offense. In total, Franklin's offense level was 23. Combined with a criminal history category of I, Franklin's Guidelines range was 46 to 57 months of imprisonment.

At sentencing, the district court adopted the PSR without objections. Franklin argued for a below-Guidelines sentence, citing his military service and his family's circumstances. The Government requested a within-Guidelines sentence, emphasizing the

need for general deterrence for this type of conduct, especially for those employed by the United States Postal Service.

The district court found a downward variance would not be appropriate because of the seriousness of Franklin's conduct, even though it found no motive apparent other than greed. It considered the mitigating factors raised by Franklin and sentenced him to 48 months' imprisonment for each count, to run concurrently, which was two months above the lowest end of Franklin's advisory Guidelines range. Franklin now appeals, arguing that his sentence was unreasonable. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

II.

We review sentencing decisions for reasonableness. *United States v. Booker*, 543 U.S. 220, 261 (2005). "Reasonableness review has procedural and substantive components." *United States v. Elboghdady*, 117 F.4th 224, 233 (4th Cir. 2024) (internal quotation marks omitted) (quoting *United States v. Hargrove*, 701 F.3d 156, 160 (4th Cir. 2012)). Here, Franklin only challenges the procedural reasonableness of his sentence.

"A district court commits procedural error by failing to calculate (or improperly calculating) the Guidelines range." *Elboghdady*, 117 F.4th at 235 (internal quotation marks omitted) (quoting *United States v. Smith*, 75 F.4th 459, 464 (4th Cir. 2023)). District courts have an independent obligation to correctly calculate a defendant's Guidelines range. *United States v. Henderson*, 159 F.4th 213, 219 (4th Cir. 2025) (citing *Gall v. United States*, 552 U.S. 38, 50 (2007)). When reviewing the district court's calculation of a

defendant's advisory Guidelines range, we review legal conclusions de novo and findings of fact for clear error. *United States v. Mitchell*, 78 F.4th 661, 667 (4th Cir. 2023) (citing *United States v. Hampton*, 628 F.3d 654, 659 (4th Cir. 2010)).

Franklin failed to raise any objection to the firearm enhancement at sentencing and thus any error by the district court is confined by our plain error analysis.[1] Thus, Franklin must show three things to prevail: "(1) an error occurred, (2) the error was plain, and (3) the error affected his substantial rights." *United States v. Lockhart*, 947 F.3d 187, 191 (4th Cir. 2020) (citing *United States v. Olano*, 507 U.S. 725, 732 (1993)). Franklin has the burden to show that the error impacted his substantial rights—that it was not harmless. *Olano*, 507 U.S. at 732. A procedural error in sentencing does not impact a defendant's substantial rights if " 'the district court would have reached the same result even if it had decided the [G]uidelines issue the other way []' and . . . 'the sentence would be reasonable even if the [G]uidelines issue had been decided in the defendant's favor.' " *United States v. Savillon-Matute*, 636 F.3d 119, 123 (4th Cir. 2011) (quoting *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006)). And even if Franklin can show the error impacted his substantial rights, we will not correct such an error unless it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at 732 (internal quotation marks omitted) (quoting *United States v. Young,* 470 U.S. 1, 15 (1985)).

[1] Franklin does not dispute that plain error review applies.

III.

Franklin raises a single argument challenging his eligibility for the firearm enhancement. He asserts that the Government did not offer sufficient evidence that he possessed a firearm in connection with either his theft or possession offense. Therefore, the district court should not have applied the firearm enhancement, and it committed procedural error by miscalculating his Guidelines range.

A.

USSG § 2B1.1 applies when a defendant is convicted of theft, embezzlement, receipt of stolen property, property destruction, and offenses involving fraud or deceit. It increases a defendant's total offense level by two "if the offense involved. . . possession of a dangerous weapon (including a firearm) *in connection with* the offense."[2] § 2B1.1(b)(16)(B) (emphasis added). Crucial to Franklin's argument's is the definition of "in connection with." However, the Guidelines text and its commentary do not define "in connection with" and we have yet to interpret that language in the context of this Guideline provision. But we have defined "in connection with" in a similar enhancement, USSG § 2K2.1(b)(6)(B).

i.

§ 2K2.1(b)(6)(B) applies if a defendant "used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used

[2] The applicable Guidelines here is the version effective from November 1, 2023, to October 31, 2024.

or possessed in connection with another felony offense." *Id.* Although this enhancement applies to defendants when a firearm is used in connection with *another* felony offense, compared to § 2B1.1(b)(16)(B)'s application when a firearm is used in connection with *the* offense, it is still instructive.

In the § 2K2.1(b)(6)(B) context, we have determined that "in connection with" is synonymous with "in relation to," such that "a weapon is used or possessed 'in connection with' another offense if the weapon 'facilitates or has a tendency to facilitate the other offense.' " *United States v. Blount*, 337 F.3d 404, 411 (4th Cir. 2003) (cleaned up) (quoting *United States v. Garnett*, 243 F.3d 824, 828 (4th Cir. 2001)). This standard is not "especially burdensome." *United States v. Bolden*, 964 F.3d 283, 287 (4th Cir. 2020). A weapon is used in connection with another offense if the weapon " 'ha[d] some purpose or effect with respect to the' " crime, *Blount*, 337 F.3d at 411 (quoting *Smith v. United States*, 508 U.S. 223, 238 (1993)), including "if the firearm was present for protection or to embolden the actor." *United States v. Lipford*, 203 F.3d 259, 266 (4th Cir. 2000) (citing *United States v. Mitchell*, 104 F.3d 649, 654 (4th Cir. 1997)). The "presence or involvement [of the weapon] cannot be result of accident or coincidence." *Blount*, 337 F.3d at 411 (cleaned up).

ii.

The court has further interpreted the meaning of "in connection with" in § 2K2.1(b)(6)(B) in both the drug possession and drug trafficking context. As explained below, these cases provide a helpful analogy. Importantly, the commentary to § 2K2.1(b)(6)(B) directs that proximity of a firearm to drugs in connection with a drug

trafficking offense creates a presumption that the firearm facilitated the offense. § 2K2.1 cmt. n.14(B). But for drug possession crimes, district courts "must evaluate whether the firearm 'facilitated, or had the potential of facilitating' " the drug possession. *United States v. Jenkins*, 566 F.3d 160, 163 (4th Cir. 2009).

In *United States v. Jenkins*, the court held that the district court's factual findings supported its determination that a firearm facilitated the defendant's drug possession offense. 566 F.3d at 164. There, the court relied on the presentence report's description of the defendant's environment—a public street late at night where a firearm was recently shot—as support for the district court's conclusion that "there was a heightened need for protection and that the firearm emboldened [the defendant]." *Id.*

In *United States v. Bolden*, the court vacated and remanded the sentence of a defendant who was charged with being a felon in possession based on two firearms recovered from his home after his arrest. 964 F.3d at 284. The defendant was deemed eligible for a § 2K2.1(b)(6)(B) firearm enhancement because the firearms recovered were found in the same bedroom as cocaine. *Id.* But the court found the district court's factual findings insufficient in "linking the firearms to [the defendant's] cocaine possession" because "physical proximity is not by itself enough to establish the necessary connection between guns and a drug possession offense." *Id.* at 287–88.

In *United States v. Mitchell*, the court again took issue with a district court's reliance on weak facts when applying a § 2K2.1(b)(6)(B) enhancement. 78 F.4th at 665. The court held that a defendant who was found in his car late at night on a rural road, slumped over and unconscious with cocaine in his pocket and a loaded firearm in his hand, was not

eligible for a § 2K2.1(b)(6)(B) enhancement because the district court failed to make "express" findings that the firearm facilitated or had the potential to facilitate the defendant's possession of the cocaine. *Id.* at 671–73. Contemporaneous possession of the firearm and cocaine on his person was insufficient, because "proximity alone fail[ed] to establish that [the defendant's] possession of the gun was connected to his possession of cocaine." *Id.* at 672. What's more, the court noted that there were multiple, plausible reasons offered by both parties as to why the defendant might have carried a firearm on a rural road at night, whether it was to embolden his possession or because he drove a truck in a secluded and rural area of North Carolina. But because appellate courts may not presume a sentencing court has "silently adopted arguments presented by a party[,]" the court determined it was precluded from review. *Id.* at 673 (internal quotation marks omitted) (citing *United States v. Carter*, 564 F.3d 325, 329 (4th Cir. 2009)).

B.

Relying on our precedent interpreting § 2K2.1(b)(6)(B), we conclude that the firearm enhancement's use of 'in connection with' similarly means 'in relation to.' Accordingly, the firearm enhancement only applies if Franklin's weapon facilitated or had the potential to facilitate either of his offenses. *See Blount*, 337 F.3d at 411 (cleaned up). After reviewing the record, we cannot properly address Franklin's challenge because the district court failed to make "express findings[s]" linking Franklin's possession of a firearm

with either his theft or possession of stolen checks.[3] *Mitchell*, 78 F.4th at 673 (quoting *Bolden*, 964 F.3d at 288).

Regarding Franklin's theft offense, there is nothing in the record that supports the conclusion that the firearm recovered from Franklin's vehicle facilitated or had the potential to facilitate the offense. The more likely assumption is that Franklin's role as a postal service employee afforded him the opportunity to access and steal the checks—not the use or presence of any firearm. But regardless, we are constrained to vacate because the district court made no factual findings on this point.

For Franklin's possession offense, the Government insists that the firearm facilitated or had the potential to facilitate possession of the stolen checks because the firearm was kept in his backpack along with one of the checks, a stolen document with "intrinsic value."

[3] Our colleague in dissent concludes the firearm facilitated Franklin's offenses because it was found along with a stolen check in Franklin's backpack in the backseat of his vehicle, making the firearm both "accessible and ready for use." Diss. Op. at 29–30. But "physical proximity is not by itself enough to establish the necessary connection" here. *Bolden*, 964 F.3d at 287–88. And there are several plausible reasons why Franklin might have carried one in his vehicle. The dissent cites *United States v. Alvarado Perez*, 609 F.3d 609, 614 (4th Cir. 2010), as instructive because the court affirmed a district court's finding that "carrying a loaded firearm in a backpack . . . facilitated or had the potential of facilitating" another offense. Diss. Op. at 30. But that case concerned a defendant who entered a probation office with a loaded firearm in his backpack with no safety mechanism. *Alvarado Perez*, 609 F.3d at 614. Importantly, the offense in *Alvarado Perez* that the court concluded the firearm "facilitated" was a reckless endangerment conviction under Maryland law. *Id.* It makes sense that a loaded firearm with a disengaged safety would facilitate one's reckless endangerment of others. Such a logical conclusion is not apparent in Franklin's case—another reason why further factual findings are needed from the district court.

Appellee's Br. (ECF No. 53) at 16.[4] But proximity alone cannot support the conclusion that a firearm facilitated or had the potential to facilitate an offense. *See Bolden*, 964 F.3d at 288.

What's more, the record indicates that Franklin's environment was vastly different from that of the defendant in *Jenkins*, where the district court made factual findings leading this court to affirm application of the § 2K2.1(b)(6)(B) enhancement. 566 F.3d at 164. Here, there is no evidence that Franklin was stopped late at night, that the checks were being guarded by a firearm, or that any danger had arisen such that Franklin needed protection in possessing or stealing the checks. *See Jenkins*, 566 F.3d at 164. It "is not 'so obvious' from the record" that Franklin's firearm facilitated or had the potential of facilitating his offense and the district court failed to make factual findings on this issue. *Mitchell*, 78 F.4th at 673 (quoting *Bolden*, 964 F.3d at 288). We cannot affirm the application of the enhancement because we cannot "[confidently] assume the district court's fact-finding role." *Id.* at 671.

Importantly, we make no determination as to whether the enhancement is inapplicable as a matter of law. We acknowledge that this case is before us after Franklin failed to raise at sentencing the arguments he raises now. But regardless of whether a defendant raises an objection at sentencing, the obligation rests with the district court to independently and correctly calculate a defendant's Guidelines range. *Henderson*, 159 F.4th at 219 (holding that failure to object to a presentence report "didn't relieve the district

[4] Page numbers for citations to ECF documents utilize the page numbers in the header on each document.

court of its independent duty to calculate [the defendant's] proper [G]uideline range, which includes consideration of applicable enhancements."). That means district courts have an obligation to make independent evaluations of any recommended enhancements to determine whether the record supports such application.

In the case of the § 2B1.1(b)(16)(B) enhancement, district courts must make the necessary factual findings to determine whether a defendant's possession of a firearm facilitated or had the potential to facilitate another felony offense. Failure to do so constitutes procedural error. Accordingly, we hold that the district court's imposition of the firearm enhancement without making the necessary factual findings was error.

IV.

Now that we have determined the district court erred, we must determine whether that error was plain. That is, the district court's error must have been "clear or obvious." *United States v. Lynn*, 592 F.3d 572, 577 (4th Cir. 2010). An error is clear and obvious "if the settled law of the Supreme Court or this circuit establishes that an error has occurred." *United States v. Carthorne*, 726 F.3d 503, 516 (4th Cir. 2013) (internal quotation marks omitted) (quoting *United States v. Maxwell*, 285 F.3d 336, 342 (4th Cir. 2002)).

We hold that the district court's error was plain. "[A]ll sentencing proceedings" must begin "by correctly calculating the applicable Guidelines range." *Gall*, 552 U.S. at 49. As stated above, "district courts have an independent obligation to properly calculate" a defendant's Guidelines range regardless of the "parties' arguments or the recommendations in the presentence report." *Henderson*, 159 F.4th at 219. And part of

that obligation is to make the necessary factual findings to determine whether an enhancement applies. The court has instructed district courts that they "must first evaluate whether evidence exists to support a finding that that [a defendant's] possession of a gun facilitated or had the potential to facilitate" their offense. *Mitchell*, 78 F.4th at 673. Thus, "an 'individualized assessment' based on the particular facts of the case before it" is required. *Id.* Here, the record is devoid of any factual findings by the district court as to whether Franklin's possession of a gun facilitated or had the potential to facilitate his possession of stolen checks. And without that factual finding, the district court could not perform its independent obligation to correctly calculate the applicable Guidelines range. *Gall*, 552 U.S. at 49. We hold that such failure constitutes a clear and obvious procedural error.

V.

Last, we must consider whether the district court's error impacted Franklin's substantial rights.

An error affects a defendant's substantial rights if there is " ' "a reasonable probability that, but for the error," the outcome of the proceeding would have been different.' " *Rosales-Mireles v. United States*, 585 U.S. 129, 134–35 (2018) (quoting *Molina-Martinez v. United States*, 578 U.S. 189, 194 (2016)). In the case of plain error, that outcome must be that "a different sentence might have been imposed." *Henderson*, 159 F.4th at 221 (quoting *United States v. Hernandez*, 603 F.3d 267, 273 (4th Cir. 2010)). By determining (1) whether " 'the district court would have reached the same result even

if it had decided the [G]uidelines issue the other way,' and (2) if " 'the sentence would be reasonable even if the [G]uidelines issue had been decided in [Franklin's] favor,' " we can ascertain whether Franklin's substantial rights have been impacted. *Savillon-Matute*, 636 F.3d at 123 (quoting *Keene*, 470 F.3d 1349). And even then, we will not correct such an error unless it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at 732 (internal quotation marks omitted) (quoting *Young*, 470 U.S. at 15)).

Because we cannot determine from the record whether the district court would have reached the same result and because the district court's error affects the fairness of judicial proceedings, we hold Franklin's substantial rights were impacted.

A.

When a district court commits a procedural error in sentencing, we employ the harmlessness inquiry "to avoid the empty formality of an unnecessary remand where it is clear that an asserted [G]uideline[s] miscalculation did not affect the ultimate sentence." *Hargrove*, 701 F.3d at 163 (cleaned up). The substantial rights analysis is akin to the harmlessness inquiry with one key difference: on review for plain error, the defendant, not the government, bears the burden of showing their substantial rights have been affected. *See Olano*, 507 U.S. at 734 (explaining that the substantial rights element of the plain error inquiry is one in the same as the harmlessness inquiry other than the burden shifting to the defendant). Thus, we apply the harmlessness inquiry to whether Franklin's substantial rights were affected but require Franklin to show that his sentence would have been different but for the district court's error.

From what we can glean from the record, we cannot tell whether the district court would have reached the same result even if it had not erred. We acknowledge that, without any objections, the district court had no reason to assume it may have erred in calculating the Guidelines range. But that reality carries little weight in determining if the district court would have reached the same outcome even under the correct Guidelines range. Rather, we are compelled to find that the district court would not have reached the same result because there was no independent explanation of why 48 months was sufficient but not greater than necessary to achieve the goals of sentencing, let alone why 48 months would be sufficient as an *alternate variant sentence*. That is, the district court did not tell us why 48 months was an appropriate sentence, even if Franklin's Guidelines range was 30–37 months.[5]

When imposing Franklin's sentence, the district court stated that it believed it calculated the Guidelines range correctly but even if it did not, it would "impose the same sentence as an alternative variant sentence" pursuant to *United States v. Hargrove*, 701 F.3d 156 (4th Cir. 2012), and *United States v. Gomez-Jimenez*, 750 F.3d 370 (4th Cir.

[5] Franklin asserts that the correct Guidelines range is 30–37 months because without the enhancement, he would receive a zero-point offender reduction pursuant to USSG § 4C1.1(a)(7) that would decrease his total offense level by four. Although the record does not definitively indicate whether this reduction would apply if Franklin was sentenced without the firearm enhancement, it does not matter whether Franklin's Guidelines range is 30–37 months compared to 37–46 months. What matters is the district court's failure to explain why *any* upward variance was appropriate. And under either Guidelines range, Franklin's sentence of 48 months would constitute an upward variance.

2014)—landmark cases in our harmlessness jurisprudence. J.A. 58.[6] But each of those cases is markedly different and inapplicable to the facts here.

In both *Hargrove* and *Gomez-Jimenez*, the district courts engaged in a thorough analysis of the 18 U.S.C. § 3553(a) factors *after* the defendant objected to their calculated Guidelines range. Only then did they declare they would impose the same sentence as an alternate variant sentence if they were wrong on the Guidelines issue. Importantly, the district courts in those cases contemplated (in response to an objection by the defendant) whether they might have calculated each defendant's Guidelines range incorrectly and ultimately concluded they would have reached the same result even if they were mistaken.

In *Hargrove*, the probation officer recommended the defendant's advisory Guidelines range was 10–16 months of imprisonment, but the defendant objected, arguing the correct range was 0–6 months. 701 F.3d at 159. The district court, after entertaining all the parties' arguments, calculated a range of 41–51 months as appropriate and noted "it would sentence Hargrove to 51 months if imposing [a] sentence under that range." *Id.* at 160. But in determining an upward variance of 60 months was justified, it stated: "If I had sustained the [d]efendant's objections and come up with a Guideline[s] range that the [d]efendant did not object to, I would still have imposed both the upward departure to 60 months and an upward variance to 60 months." *Id.* (internal quotation marks omitted).

[6] Citations to "J.A." refer to the joint appendix filed by the parties. The J.A. contains the record on appeal from the lower court. Page numbers for citations to the J.A. utilize the "J.A." numbering at the bottom of the page on each document.

In *Gomez-Jimenez*, there were two defendants. For the first defendant, the advisory Guidelines range was 168–210 months of imprisonment, the defendant objected, and the district court overruled his objection. 750 F.3d at 375–76. It sentenced him to 180 months' imprisonment after considering the § 3553(a) factors and indicated it would impose an alternate variant sentence with a statement similar to the statement of the district court in Franklin's case. *Id.* at 376 ("The district court stated: I do believe that I have calculated the advisory [G]uideline[s] range properly. If, however, it's determined that I have not, I announce pursuant to *United States v. Keene*, 470 F.3d 1347 (11th Cir. 2006), and *United States v. Savillon-Matute*, 636 F.3d 119 (4th Cir. 2011), that I would have imposed this same sentence as an alternative variant sentence in light of all the 3553 factors." (second alteration in original)). For the second defendant, the advisory Guidelines range was 360 months to life for two of the counts and 240 months for the last four counts. *Id.* Again, the second defendant raised objections, the district court overruled them and indicated it would impose an alternate variant sentence with a statement like that made to the first defendant. *Id.* at 376–77 ("The district court stated that, although it believed it had properly calculated the Guidelines range, it would have imposed the same sentence as a variant sentence pursuant to *Keene*, 470 F.3d 1347, *Savillon-Matute*, 636 F.3d 119, and *United States v. Hargrove*, 701 F.3d 156 (4th Cir. 2012).")

Unlike the defendants in *Hargrove* and *Gomez-Jimenez*, Franklin did *not* raise any objections to his Guidelines range at sentencing. In imposing Franklin's sentence, the district court certainly engaged the § 3553(a) factors in considering the nature and circumstances of the offenses, Franklin's history, needs for deterrence, and the seriousness

of his offenses, among other factors. It ultimately sentenced him to 48 months' imprisonment, at the bottom of Franklin's Guidelines range, without any indication it may have miscalculated that range. J.A. 52–59. This is different from *Hargrove* and *Gomez-Jimenez*, where in response to an objection to each defendant's Guidelines range, the district court determined that it would impose the same sentence regardless of the accuracy of its calculation.

The Sentencing Guidelines serve as a tool for district courts to determine proportionate sentences. But the discretion afforded to district courts is not without limits. District courts are required to explain their conclusions when they impose an above-Guidelines sentence or an otherwise "unusually lenient or an unusually harsh sentence . . . to allow for meaningful appellate review and to promote the perception of fair justice." *Gall*, 552 U.S. at 46, 50. If the harmlessness inquiry is one of our court's tools for appellate review, "[n]othing could be less meaningful than labeling an error harmless so long as a district court states it would impose the same sentence in the event it erred, without also thoroughly explaining *why* it would do so." *Gomez-Jimenez*, 750 F.3d at 390 (4th Cir. 2014) (Gregory, J., concurring) (cleaned up) (citing *United States v. Zabielski,* 711 F.3d 381, 389 (3d Cir. 2013)). "The absence of such justification for the alternative sentence cannot be more at odds with the perception of fair justice." *Id.*; *see also United States v. Peña-Hermosillo*, 522 F.3d 1108, 1117 (10th Cir. 2008) (finding it hard "to imagine a case where it would be procedurally reasonable for a district court to announce that the same sentence would apply even if correct guidelines calculations are so substantially different, without cogent explanation" because the reviewing court "might be inclined to suspect that

the district court did not genuinely 'consider' the correct guidelines calculation in reaching the alternative rationale").

Here, the district court only rejected a downward variance and granted the Government's request for a within-Guidelines sentence. While the district court stated that it would impose the same alternate variant sentence if it made an incorrect calculation, it did not provide *any* justification as to why. *See* J.A. 58–59. This blanket statement alone cannot support the conclusion that the district court would have reached the same result. *See Gomez-Jimenez*, 750 F.3d at 390 (Gregory, J., concurring). We do not have "knowledge of an identical outcome," and "we are not so omniscient as to possess the requisite knowledge." *United States v. Montes-Flores*, 736 F.3d 357, 371 (4th Cir. 2013). Simply, we do not know whether the district court would have still imposed a 48-month sentence if it had used the correct Guidelines range—30 to 37 months—instead of the higher, incorrect range of 46–57 months.

Though the Guidelines are advisory, a district court may not shield itself from meaningful appellate review of a miscalculated Guidelines range by pronouncing *without proper justification* that it would have imposed the same sentence regardless of the correct Guidelines range. "Because the record does not provide us with knowledge that the district court would have reached the same result even if it had decided the Guidelines issue the other way," we must hold that the district court's error impacted Franklin's substantial rights. *Simmons*, 143 F.4th at 208 (citing *Montes-Flores*, 736 F.3d at 370) (cleaned up).

B.

Our inquiry concludes with a determination of whether the district court's error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at 732 (internal quotation marks omitted) (quoting *Young*, 470 U.S. at 15). We hold that it does. Nothing could "be more at odds with the perception of fair justice" in our judicial system than erroneous application of an enhancement resulting in a lengthened sentence. *Gomez-Jimenez*, 750 F.3d at 390 (Gregory, J., concurring). And we cannot even determine the depth of that error without further factual findings from the district court.

VI.

For the foregoing reasons, we vacate Franklin's sentence and remand for resentencing consistent with this opinion.

VACATED AND REMANDED WITH INSTRUCTIONS

AGEE, Circuit Judge, dissenting:

When, as here, a district court does not make the specific factual findings to support an offense-level enhancement used to calculate a defendant's Guidelines range, the Court must consider whether the applicability of the enhancement is "so obvious from the record that we may assume the district court's fact-finding role ourselves with any confidence." *United States v. Bolden*, 964 F.3d 283, 288 (4th Cir. 2020). The existing record and analogous caselaw make it "obvious" that Franklin's possession of the firearm facilitated his theft offense under the unique facts of this case. For these reasons, I would affirm his sentence. Therefore, I respectfully dissent.

I.

The facts are undisputed, and drawn largely from the factual statement offered in support of Franklin's guilty plea. When the underlying events occurred, Franklin was an employee of the U.S. Postal Service.

In June 2023, Fayetteville, North Carolina, police initiated a traffic stop while Franklin was driving his personal vehicle. A female passenger was also in the vehicle. After observing marijuana in plain view, the police searched his vehicle. A backpack in the vehicle's main compartment contained (1) 59 grams of marijuana; (2) a bag containing marijuana residue; (3) $22,539 U.S. currency; (4) a loaded 9mm firearm; and (5) a U.S. treasury check for $3,256. The treasury check had been altered to replace the original payee's name with the name of Franklin's passenger. In the trunk of Franklin's vehicle, officers located drug paraphernalia, a handgun magazine, and 47 additional checks from

the U.S. treasury made payable to many individuals (none belonged to Franklin). The checks had been issued as tax refunds or Veteran's and Social Security disability benefits to their payees. The face value of the checks in the trunk totaled approximately $752,421.48.

About a week after this traffic stop, an individual ("G.A.") reported that her tax refund check had been stolen from the mail, altered to reflect Franklin's name as the payee, and cashed at Walmart.

Three weeks later, law enforcement again stopped Franklin while he was driving his personal vehicle. This time, after a canine sniff alerted for narcotics, they searched the vehicle and recovered paraphernalia associated with altering checks as well as one U.S. treasury check (again, not belonging to Franklin).

Within a week, law enforcement obtained a search warrant for Franklin's house. When they executed the warrant, they located two more U.S. treasury checks—each in an amount of around $3,000 and altered to reflect a different payee's name—and marijuana.

Franklin was indicted on one count of stealing G.A.'s U.S. treasury check from the mail while he was a mail carrier and as a consequence of that position, in violation of 18 U.S.C. § 1709, and one count of knowingly possessing stolen envelopes containing U.S. Treasury checks, in violation of 18 U.S.C. § 1708.

Franklin pleaded guilty without the benefit of a written plea agreement, and he consented to have a magistrate judge conduct the Rule 11 plea hearing. As part of the plea colloquy, he acknowledged that he understood the charges against him, the sentencing process, and his rights throughout the proceedings.. The magistrate judge accepted

Franklin's guilty plea, finding that it was knowing, voluntary, and supported by a sufficient factual basis.

A probation officer prepared Franklin's pre-sentence report (PSR) in which the offenses were grouped, resulting in a base offense level of 6. The PSR applied the following offense-level adjustments: a 14-level increase based on the value of the checks; a 2-level enhancement for the number of victims; a 2-level enhancement for abusing a position of trust; a 2-level enhancement because Franklin possessed a firearm in connection with the offense; and a 3-level reduction for acceptance of responsibility. This calculation resulted in an adjusted offense level of 23, which, coupled with Franklin's criminal history category of 1, yielded an advisory Guidelines range of 46 to 57 months' imprisonment.

Franklin did not object to the PSR. (Nor did the Government.)

At the sentencing hearing, the district court ensured that Franklin had reviewed the PSR with his attorney and confirmed that he still had no objections. Hearing no objections, the district court adopted the PSR and the advisory Guidelines range with no changes or elaboration.

The court then entertained the parties' arguments for an appropriate sentence under the § 3553(a) factors. The Government argued for a within-Guidelines sentence based on the nature of the offense, including its scope and Franklin's abuse of his role as a mail carrier. Franklin, meanwhile, urged the court to impose a lower sentence. He emphasized that he had no criminal history, had served honorably in the U.S. Army, and had lost both his job and his veterans' disability benefits because of these convictions. During Franklin's argument, the court engaged in extensive questioning, pressing for whether any motive

existed besides greed (none was provided), and noting Franklin's abuse of a position of trust and the vulnerability of his victims (largely elderly, disabled, or veteran recipients of federal benefits).

The court imposed a 48-month sentence, which was two months higher than the bottom of the Guidelines range, followed by three years' supervised release. It acknowledged Franklin's proffered mitigating circumstances, but concluded that the facts of his offense supported a sentence of this length. In particular, the court observed that Franklin had stolen money from society's most vulnerable citizens, that he had persisted after the first traffic stop, and that he had only stopped once forced to do so. It also specifically cited the need for both general and special deterrence, elaborating on the dangerous precedent set by mail carriers stealing citizens' mail.

Then, citing this Court's precedent, the court observed that although it believed it had "properly calculated the advisory guidelines range, . . . [it would] impose the same sentence as an alternative variant sentence" if it had erred. J.A. 58. Last, it reiterated its belief that the 48-month sentence was "sufficient but not greater than necessary to comply with the purposes set forth in [§ 3553(a)]," and that it had "carefully considered the arguments of each" party and if it imposed a sentence different than requested, that was because it "rejected their arguments for a different balance under [§] 3553(a)." J.A. 58–59.

Franklin noted a timely appeal. Counsel filed an *Anders*[*] brief, asserting there were no meritorious grounds for appeal, but raising a handful of issues for the Court to consider,

[*] *Anders v. California*, 386 U.S. 738 (1967).

including whether the district court plainly erred in calculating his Guidelines range to include the 2-level enhancement for the offense occurring "in connection with" a firearm. The Government responded at the Court's request. Franklin's reply brief then—for the first time—delved into reasons why this Court should reject application of the 2-level firearm enhancement.

II.

The Court's review of an unobjected-to Guidelines enhancement is particularly deferential. Ordinarily, review of the district court's determination to apply an offense-level enhancement would be for clear error as to any facts and de novo as to any legal conclusions. *United States v. Llamas*, 599 F.3d 381, 387 (4th Cir. 2010). But when a district court does not make the specific relevant factual findings, we review whether the applicability of the enhancement is "so obvious from the record that we may assume the district court's fact-finding role ourselves with any confidence." *Bolden*, 964 F.3d at 288.

What's more, because Franklin did not object to the inclusion of this enhancement to his Guidelines calculation in the district court, our review is for plain error. *See United States v. Olano*, 507 U.S. 725, 731–32 (1993). To establish reversible error on plain-error review, Franklin must show (1) the existence of legal error; (2) that the error is plain, i.e., "clear or, equivalently, obvious"; (3) that the error affected his substantial rights, meaning (in the sentencing context) that there is a non-speculative basis for concluding the district court would have imposed a lower sentence but for the error; and (4) that the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

at 732–36 (cleaned up); *accord United States v. Knight*, 606 F.3d 171, 177–78 (4th Cir. 2010).

Franklin's argument fails to show a clear or obvious error (steps one and two), making affirmance appropriate.

A.

At the first step, the district court did not err in applying the 2-level enhancement to Franklin's Guidelines offense level because, under the available facts in the record, he obviously possessed a firearm "in connection with" his offense of conviction.

Under U.S.S.G. § 2B1.1(b)(16)(B), a larceny-based offense level should be increased by two levels "[i]f the offense involved . . . possession of a dangerous weapon (including a firearm) in connection with the offense." The Guidelines do not define "in connection with," and this Court has no relevant caselaw interpreting this Guideline provision.

The same "in connection with" language is found in the then-applicable § 2K2.1(b)(6)(B), which enhances the offense level for firearms-related convictions by four levels when the firearm is possessed "in connection with another felony offense." Thus, although the two provisions have some different requirements, they share the feature of requiring proof that the firearm is possessed "in connection with" a non-firearm offense. But unlike § 2B1.1(b)(16)(B), § 2K2.1(b)(6)(B) explains that "in connection with" means that the enhancement applies when the firearm "facilitated, or *had the potential of facilitating*" the non-firearm offense. § 2K2.1 cmt. n.14(B) (emphasis added). Our case law interpreting § 2K2.1(b)(6)(B)'s language is in accord, observing that this requirement is

"not especially burdensome," and that the Court "will find it satisfied . . . where a firearm is 'present for protection or to embolden the actor.'" *Bolden*, 964 F.3d at 287 (quoting *United States v. Jenkins*, 566 F.3d 160, 162 (4th Cir. 2009)). Still, we have cautioned that "a firearm does not have the requisite purpose or effect when it is 'present due to mere accident or coincidence.'" *Id.* (quoting *Jenkins*, 566 F.3d at 163).

Under this standard, I conclude that the record "obvious[ly]" supports imposition of the 2-level firearm enhancement. *Id.* at 288. Far from being a case of "mere accident or coincidence," it's no leap at all to see how the presence of the firearm facilitated Franklin's ongoing offense of possessing stolen mail, specifically, U.S. treasury checks with a face value of over $750,000. *Id.* at 287 (quoting *Jenkins*, 566 F.3d at 163). We have, for example, recognized that possession of a firearm with narcotics valued at far less facilitates drug offenses. *See, e.g.*, *Jenkins*, 566 F.3d at 163 (recognizing that "[a] firearm can embolden the actor to possess the drugs or provide the actor protection for himself and his drugs, which are likely to be personally valuable even in small amounts [possessed for personal use]"). The same logic applies here. *See id.* Concluding otherwise would seem not only to defy logic, but common sense as well. How is three-quarters of a million dollars in accessible and fungible government checks different from three-quarters of a million dollars in accessible narcotics for purposes of motivating a defendant to protect his treasure? In both cases, the firearm "emboldens" and "protects" the defendant while he's driving around with his valuable contraband. Under our caselaw, that the firearm had an obvious "purpose or effect with respect to the other offense" is sufficient, as a matter of

law, to support imposition of the enhancement because it excludes presence "due to mere accident or coincidence." *Jenkins*, 566 F.3d at 163 (cleaned up).

But the existing record establishes far more than proximity as an obvious basis for imposing the enhancement. We have likewise observed that the "type of firearm involved" matters, as a handgun—like the one Franklin possessed—is much more readily connected to an offense that is underway than, say, "an unloaded hunting rifle" that happens to be located in the same room as drugs. *United States v. Manigan*, 592 F.3d 621, 629 (4th Cir. 2010). Similarly, being out in public (as Franklin was) carries weight in determining whether the firearm facilitated the other offense. *E.g.*, *Jenkins*, 566 F.3d at 164 (citing favorably *United States v. Smith*, 535 F.3d 883, 886 (8th Cir. 2008), for the "importance of venturing into public" to support imposition of the enhancement (cleaned up)).

We have also looked to whether the firearm was "accessible and ready for use," as it was here. *Id.*; *United States v. Hampton*, 628 F.3d 654, 663 (4th Cir. 2010) ("[We previously] noted that the government could have satisfied its burden [as to facilitation] by showing that the defendant kept the weapon accessible in preparation for any problems that might have arisen during the [offense]."); *Manigan*, 592 F.3d at 629 (4th Cir. 2010) (similar); *United States v. Blount*, 337 F.3d 404, 411 (4th Cir. 2003) (stating that "the Government can meet [its] burden [as to facilitation] by showing, for example, that the defendant actually used the . . . weapon to intimidate occupants of the home, *or that he prepared for this contingency by keeping the firearm close at hand*" (emphasis added)). And here, Franklin possessed the loaded firearm while he was driving around with over three-quarters-of-a-million dollars in stolen checks, rendering it both "accessible" and

"ready for use." *United States v. Alvarado Perez*, 609 F.3d 609, 614 (4th Cir. 2010) (agreeing with the district court's finding that "carrying a loaded firearm in a backpack . . . facilitated or had the potential of facilitating" another offense). The totality of the evidence is thus sufficient to clear the "not especially burdensome" hurdle of demonstrating that the presence of the firearm facilitated in some way Franklin's larceny offense. *Bolden*, 964 F.3d at 287. I therefore conclude that the district court did not err in including the enhancement when calculating Franklin's Guidelines range.

B.

Because there was no error, it can hardly be said to have been "clear" or "obvious." *See Olano*, 507 U.S. at 734. But even assuming an error occurred, it would not clear this separate threshold. That's because we have not previously considered "in connection with" in the context of § 2B1.1(b)(16)(B), nor have we addressed this language for purposes of either that section or § 2K2.1(b)(6)(B) when the other offense involved possession of stolen mail containing U.S. treasury checks. Imposition of the Guidelines enhancement cannot be deemed clear or obvious error under these circumstances, as "[a]n error can be 'plain' only on the basis of settled law." *United States v. Carthorne*, 878 F.3d 458, 464 (4th Cir. 2017); *accord Olano*, 507 U.S. at 734 ("At a minimum, court[s] of appeals cannot correct [unpreserved] error pursuant to Rule 52(b) unless the error is clear under current law.").

III.

For the reasons stated, I respectfully dissent and would affirm the judgment of the district court.