UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-4487

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUVE MARKIE LEQUAN MCALPIN,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, Chief District Judge. (1:24-cr-00065-MR-WCM-1)

Submitted: August 20, 2026 Decided: August 24, 2026

Before AGEE and RUSHING, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: John G. Baker, Federal Public Defender, Melissa S. Baldwin, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Asheville, North Carolina, for Appellant. Russ Ferguson, United States Attorney, Anthony J. Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Juve Markie Lequan McAlpin appeals the 180-month sentence imposed following his guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8), and possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. §§ 922(k), 924(a)(1)(B). In calculating McAlpin's Sentencing Guidelines range of 210 to 240 months' imprisonment, the district court applied a cross-reference to the Guideline for attempted first-degree murder, *see* U.S. Sentencing Guidelines Manual §§ 2A2.1(a)(1), 2K2.1(c)(1), 2X1.1(c)(1) (2024). On appeal, McAlpin contends that the district court erred by applying the cross-reference because there was not substantial evidence of premeditation. Finding no error, we affirm.

I

At sentencing, the Government played neighborhood surveillance videos that captured McAlpin's use of the illegal firearm several days before his arrest for its possession. McAlpin was outside at an apartment complex, socializing in the middle of the street, when Trequel Hutchinson drove by in a Ford Explorer. Hutchinson's brother, Teonne, had been charged with murdering McAlpin's brother.

After the Explorer passed him, McAlpin drew his firearm and ran between a row of houses to confront the vehicle on an adjacent street.[1] McAlpin advanced down the middle of the street toward the Explorer, which attempted to reverse away. McAlpin then took

[1] At sentencing, the Government asserted that McAlpin "at least[] guessed correctly" as to which direction the Explorer would turn.

cover behind a parked car and waited. The Explorer resumed driving forward, and McAlpin fired at it as it sped past. One shot appeared to hit the car he was hiding behind, while another pierced the passenger's side door and struck Hutchinson's passenger, Jamonty Williams. McAlpin ran into the street as the Explorer sped away and fired a final shot, which struck near the taillight.

The next day, McAlpin sent a text message stating, "I shot teon brother yesterday." He later followed up, "it was jaminty." The Government argued that the misspelled texts demonstrated McAlpin believed he successfully had shot Teonne's brother (Hutchinson) but later learned that he shot Jamonty. Days later, after his arrest, McAlpin discussed the shooting in a recorded jail call, stating, "I don't care. Them ni***s killed my" either "brother" or "buddy." He further stated that they "came looking for me, I was scared for my life. I don't give a fuck."

II

"In the event of a conviction for illegal possession of a firearm, USSG § 2K2.1(c) authorizes a district court to substitute the offense level for any criminal offense that the defendant committed or attempted to commit in connection with the possession of the firearm." *United States v. Ashford*, 718 F.3d 377, 381 (4th Cir. 2013). The relevant substitute offense here is attempted murder, as defined in 18 U.S.C. § 1111. *See* USSG § 2A2.1(a).[2] If the attempted killing "would have constituted first degree murder,"

[2] McAlpin argued in the district court that he lacked the requisite intent to kill and, thus, that the relevant substitute offense was aggravated assault. *See* USSG § 2A2.2. On appeal, he does not contest that the proper substitute offense is attempted murder.

§ 2A2.1(a)(1) calls for a base offense level of 33; "otherwise," a base offense level of 27 applies, § 2A2.1(a)(2). Section 1111, in turn, defines first degree murder, as relevant here, as a "willful, deliberate, malicious, and premediated killing." 18 U.S.C. § 1111; *see United States v. Williams*, 342 F.3d 350, 356 (4th Cir. 2003).

McAlpin argues that the Government's evidence failed to establish that he planned the shooting or "engaged in behavior incompatible with impulsivity during" it. He further emphasizes that the encounter lasted less than 90 seconds. The Government counters that the evidence before the district court amply supported its finding that McAlpin "harbored a fully formed conscious purpose to kill for at least a moment."

We review the factual findings underlying a district court's application of a Guidelines cross-reference for clear error and its legal conclusions de novo. *Ashford*, 718 F.3d at 380, 383. "Premeditation exists when a person has a fully formed conscious purpose to kill, even for a moment." *United States v. Ball*, 18 F.4th 445, 456 (4th Cir. 2021) (citation modified). "In other words, the mental state required for premeditation must exist only for such time as will allow the accused to be conscious of the nature of the act he was about to commit and the probable result of that act." *Id.* at 456-57 (citation modified). "'[N]o particular period of time is necessary for . . . deliberation and premeditation'"; instead, it simply "'must be long enough for the [defendant], after forming the intent to kill, to be fully conscious of that intent.'" *United States v. Chambers*, 719 F. App'x 246, 248 (4th Cir. 2018) (No. 17-4188) (quoting *United States v. Shaw*, 701 F.2d 367, 392 (5th Cir. 1983)); *see id.* (finding it "more likely than not that [the] attempted killing was premediated" when the defendant drove past the victim, with whom he had

previously fought; stopped nearby to switch seats in the car; and returned to the victim's location to shoot him).

As the district court observed, upon seeing the Explorer, McAlpin moved to a location where he was more likely to intercept it. He then positioned himself behind a car "so that he was positioned so as to take a better shot." And his post-shooting communication indicated that he initially believed he had successfully shot the brother of his own brother's alleged murderer. The district court did not err by finding that McAlpin's actions established premeditation by a preponderance of the evidence and, thus, did not err by applying the first-degree murder cross-reference. Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED