NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0393n.06

No. 25-5948

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 06, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. EMRE NATHANIEL BALUKEN, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY O P I N I O N

Before: MOORE, THAPAR, and HERMANDORFER, Circuit Judges.

HERMANDORFER, Circuit Judge. For three months, Emre Baluken exchanged sexually explicit messages with A.T., a 16-year-old girl. Eventually, Baluken convinced A.T. to come live with him. Baluken drove from his home state of Texas to a Kentucky gas station, where he picked up A.T. During the two-day return trip, Baluken engaged in sexual conduct with A.T. multiple times. After A.T.'s family and law enforcement intervened, Baluken returned A.T. to Kentucky. He was arrested and later pled guilty to enticement of a minor to engage in unlawful sexual activity. The district court imposed a below-Guidelines sentence of 240 months' imprisonment. Baluken now asserts that his sentence reflected an improper computer-use enhancement and was substantively unreasonable. We disagree and affirm.

I

In August 2024, 23-year-old Baluken began messaging 16-year-old A.T. through the social-media platforms Instagram and X. A.T. told Baluken that she was 16—a fact her Instagram bio confirmed. For the next three months, Baluken and A.T. exchanged sexually explicit photos and videos using their cell phones.

By November, their conversations had evolved into plans to start a life together. Baluken planned to drive from Texas to Kentucky to pick up A.T. Then the two would return to Texas and live together.

Baluken followed through on the plan. In mid-November 2024, he drove from Texas to Winchester, Kentucky. He met A.T. at a gas station and the two began their journey back to Texas, traveling through several states over a 48-hour period. During that time, A.T.'s aunt informed A.T. that police were searching for her and Baluken and urged them to come back to Kentucky. Baluken and A.T. agreed to return, and police arrested Baluken after he reentered the state. A.T. confirmed that she had performed oral sex on Baluken multiple times during the trip, and that Baluken digitally penetrated her.

The Government charged Baluken with enticement of a minor to engage in unlawful sexual activity. *See* 18 U.S.C. § 2422(b). Baluken pled guilty to the enticement charge without a plea agreement. All agree that his offense of conviction carried a 10-year mandatory minimum sentence. *See id.*; Plea Hr'g Tr., R.27, PageID 171, 175.

The probation office recommended that the district court apply several enhancements under the Sentencing Guidelines. Relevant here, the presentence report recommended a two-level enhancement because Baluken used a computer (his cell phone) to commit the offense. U.S.S.G. § 2G2.1(b)(6)(B)(i). All in, the presentence report placed Baluken's recommended total offense

level at 42. Taken with Baluken's criminal history category of I, the various enhancements led to a recommended Guidelines sentencing range of 360 months to life imprisonment.

Baluken opposed application of the computer enhancement. Baluken asserted that the enhancement was duplicative because his offense of conviction—enticement of a minor in violation of 18 U.S.C. § 2422(b)—already accounted for his computer use. The district court disagreed. Citing our decision in *United States v. Lewis*, 605 F.3d 395 (6th Cir. 2010), the district court reasoned that computer use is not an element of a § 2422(b) offense, but instead an example of one "more culpable" means of committing the offense. Sent. Hr'g Tr., R.28, PageID 194. From there, the district court concluded that applying the computer-use enhancement to account for Baluken's computer-based conduct did not result in improper double counting.

The district court further agreed with the presentence report that Baluken's Guidelines range was 360 months to life. But it concluded that certain "mitigating" factors weighed in favor of varying downward and imposed a below-Guidelines sentence of 240 months' imprisonment with ten years of supervised release. *Id.* at PageID 214, 219.

Baluken timely appealed, and we have jurisdiction. *See* 28 U.S.C. § 1291; 18 U.S.C. § 3742.

II

On appeal, Baluken challenges two aspects of his sentencing proceedings. To start, he asserts that the district court improperly applied a two-level enhancement for use of a computer. In addition, he contends that his 240-month sentence was substantively unreasonable. We reject both arguments.

A

Baluken challenges the district court's application of a two-level enhancement for using a computer to commit his offense of conviction. U.S.S.G. § 2G2.1(b)(6)(B). According to Baluken, applying this enhancement meant that his punishment reflected improper "double counting" of his cell-phone use. Baluken Br. 16. As Baluken points out, the Government's complaint charged him with online enticement of a minor under 18 U.S.C. § 2422(b). Yet the district court also applied the two-level enhancement under U.S.S.G. § 2G2.1(b)(6)(B) because Baluken used a computer to commit the crime. Sent. Hr'g Tr., R.28, PageID 192-94. Baluken asserts that the district court's sentence thus wrongly factored in his cell-phone use twice.

Baluken's legal premise is correctly stated. Our caselaw prohibits district courts from imposing a Guidelines enhancement that punishes a defendant for "precisely the same" conduct already captured by the offense of conviction. *United States v. Wellman*, 26 F.4th 339, 355 (6th Cir. 2022) (quoting *United States v. Sabino*, 307 F.3d 446, 450 (6th Cir. 2002)); *United States v. Walters*, 775 F.3d 778, 782-84 (6th Cir. 2015). Double counting is often raised when the Government stacks two Guidelines enhancements. But it can also arise—as Baluken argues here—when the same conduct "supports the underlying offense and an enhancement." *Wellman*, 26 F.4th at 355; *United States v. Cousins*, 469 F.3d 572, 575 (6th Cir. 2006). When the enhancement is measured against the statute of conviction rather than another Guidelines provision, courts ask whether the enhancement "requires an additional element not required by" the statute. *United States v. Smith*, 196 F.3d 676, 684 (6th Cir. 1999).

Baluken's double-counting argument fails because § 2422(b) "does not require the Government to prove" that Baluken used a computer. *Id.* To be sure, the Government's criminal complaint styled Baluken's § 2422(b) charge as "[o]nline enticement" of a minor. Complaint, R.1,

PageID 21. But § 2422(b) does not mention the use of a computer. Instead, the provision more generally covers enticing a minor using "the mail or any facility or means of interstate or foreign commerce." 18 U.S.C. § 2422(b). The use of a computer, in other words, is not an "element of the crime" for which Baluken was sentenced. *Lewis*, 605 F.3d at 403.

The upshot is that Baluken "did not need to use a computer in order to violate" § 2422(b). *Id*. Rather, just as "one could commit a robbery without the use of a gun," one could entice a minor without the use of a computer. *United States v. Reingold*, 731 F.3d 204, 226 (2d Cir. 2013) (citation omitted). So Baluken's § 2422(b) offense "did not fully account for [his] use of a computer, because" § 2422 "would have applied" in the same way and triggered the same sentence "had he used" any non-computer "means of interstate commerce." *United States v. Korfhage*, 683 F. App'x 888, 892 (11th Cir. 2017) (per curiam) (emphasis omitted). In referencing Baluken's "[o]nline enticement," the Government thus provided a description of *how* Baluken broke the law; it did not enumerate the law's required elements. And because § 2422(b) does not target "precisely the same conduct" as the computer enhancement, no double counting occurred. *Wellman*, 26 F.4th at 355 (citation omitted).

We have already confirmed as much in an analogous context. Defendants charged with possessing or transmitting child pornography often make a similar double-counting argument when the Government chooses to stack such charges with the computer enhancement. *See, e.g.*, *Lewis*, 605 F.3d at 402-03; *United States v. Wise*, 278 F. App'x 552, 564 (6th Cir. 2008). But we—and our sister circuits—have uniformly rejected those challenges. *See Lewis*, 605 F.3d at 403-04; *Wise*, 278 F. App'x at 564; *United States v. Little*, 864 F.3d 1283, 1291-92 (11th Cir. 2017) (collecting cases). These decisions have recognized that "[t]he fact that the [child pornography] statute articulates computer use as *one* means of transporting the proscribed

depictions does not mean that use of a computer is a required element of the crime." *Lewis*, 605 F.3d at 403; *United States v. Tenuto*, 593 F.3d 695, 699 (7th Cir. 2010). Nothing counsels a different conclusion here.

B

We next consider Baluken's argument that his sentence was substantively unreasonable. "Substantive reasonableness considers whether the [district] court placed too much weight on some of the § 3553(a) factors and too little on others such that the sentence is too long (if a defendant appeals) or too short (if the government appeals)." *United States v. Roper*, 161 F.4th 430, 434 (6th Cir. 2025) (citation omitted). Because Congress vested trial judges with discretion in imposing sentences, we review a sentence's substantive reasonableness only for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). Here, Baluken's 240-month "below-Guidelines sentence was even more favorable to him than a within-Guidelines sentence." *United States v. Richards*, 164 F.4th 508, 522 (6th Cir. 2026). So he faces "a heavy burden to show it was substantively unreasonable." *Id.* (internal quotation marks and citation omitted). To succeed, Baluken must convince us not only that "a different sentence was *justified*," but that it was "*required*." *United States v. Brown*, 579 F.3d 672, 687 (6th Cir. 2009).

Baluken cannot satisfy that "difficult task." *United States v. Holt*, 116 F.4th 599, 616 (6th Cir. 2024). In an extensive sentencing colloquy, the district court carefully considered the § 3553(a) factors and reasonably chose its below-Guidelines sentence. The district court first recognized that the Guidelines called for a sentence of 360 months to life. *See* 18 U.S.C. § 3553(a)(4). It then analyzed each of the other considerations under § 3553(a). Among other things, the district court reasoned that the "nature and circumstances" of Baluken's crime were "very serious." *Id.* at § 3553(a)(1), (a)(2)(A); Sent. Hr'g Tr., R.28, PageID 209, 216. It explained

that Baluken "took advantage of a very, very vulnerable young woman" who would have to "deal with the" consequences of Baluken's actions for the "rest of her life." Sent. Hr'g Tr., R.28, PageID 210. And it determined that there "need[ed] to be a long sentence in this case" to "deter other people from engaging in" similar conduct. *Id.*; 18 U.S.C. § 3553(a)(2)(B). On the other hand, the district court weighed several mitigating factors in Baluken's favor. It noted Baluken's troubled upbringing, his youth at the time of the crime, his lack of criminal history, and his military service. *See* 18 U.S.C. § 3553(a)(1). These mitigating circumstances led the district court to choose a sentence below the Guidelines' recommendation. We see nothing unreasonable about the balance the district court chose to strike.

Baluken's counterarguments do not persuade. He contends that the Guidelines "place all defendants in the same category" and fail to "differentiate regardless of the underlying facts." Baluken Br. 12. That lack of differentiation, he argues, should have led the district court to exercise its "discretion" to vary from the Guidelines given the facts of Baluken's case. *Id.* at 13. But Baluken's own sentence undercuts his one-size-fits-all objection to his Guidelines range. Unlike other enticement defendants, Baluken received a four-level increase because the material he solicited "portray[ed] sadistic or masochistic conduct." U.S.S.G. § 2G2.1(b)(4)(A). At the same time, Baluken avoided age-based enhancements others receive because his victim was 16. *Id.* § 2G2.1(b)(1) (increasing an offender's offense level by four when the victims are under 12, and two when the victims are under 16). So contra Baluken, the Guidelines themselves do account for "differen[ces]" in the "underlying facts." Baluken Br. 12. And regardless, the district court performed the case-specific analysis Baluken describes. It acknowledged that the "age difference" between Baluken and A.T. made this case "different" from many sex-offense crimes. Sent. Hr'g

Tr., R.28, PageID 209, 216. And because Baluken's case was not "prototypical," in its view, the district court used its discretion to vary downward. *Id.* at PageID 206.

Baluken further argues that the district court failed to consider the cumulative effect that the enhancements had on his sentence. The record does not bear out that contention. The district court acknowledged that Baluken's recommended sentence under the Guidelines was "very serious" and came with a "long period" of incarceration. *Id.* at PageID 208, 213. It then declined to issue a sentence within the Guidelines range, instead opting to vary downward in light of what it saw as "mitigating" factors in Baluken's case. *Id.* at PageID 214. The district court's choice to impose a below-Guidelines sentence significantly dampened the cumulative effect of the enhancements. So there is no question that the district court considered the full picture—all enhancements included—and chose its sentence accordingly.

* * *

We affirm the judgment of the district court.