

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 24, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALLEN LEE CARLEY,

Defendant - Appellant.

No. 25-1240
(D.C. No. 1:24-CR-00214-PAB-3)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

In the aftermath of a shootout at a nightclub, Mr. Allen Lee Carley pleaded guilty to being a felon in possession of ammunition. The district court sentenced him to 30 months in prison—an upward variance from his Guidelines range of 15–21 months. On appeal, Mr. Carley challenges his sentence as substantively unreasonable. We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties’ request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

BACKGROUND

I. The Nightclub Shootout

On March 30, 2024, Mr. Carley was supposed to have the night off. But Mr. Carley's friend asked him to work door security at his nightclub in Colorado Springs because only one other guard was on duty there. He agreed to help.

Sometime that evening, Mr. Carley got a bad feeling that circumstances at the club would turn violent. So, he took a loaded pistol out of the club owner's car. At that time, he knew he could not have a firearm because he was a convicted felon.

Corey Williams arrived at the club around last call. Mr. Carley noticed a firearm tucked into Mr. Williams's waistband and told him to put it away or he would not be allowed inside. Disgruntled, Mr. Williams left. But moments later, he came back with a group of men wearing ski masks. An argument broke out and quickly escalated to violence. Members of Mr. Williams's crew pulled out guns and began shooting; in response, Mr. Carley drew his pistol and returned fire. Mr. Williams shot the club owner and the other security guard, causing serious injuries. Mr. Williams's brother was killed, though it is unknown who fired the fatal round.

During a break in the gunfire, Mr. Carley fled and discarded the pistol. Three days later, he approached the Colorado Springs Police Department to divulge his role in the shootout. In a voluntary interview, Mr. Carley admitted to having possessed the pistol, but he did not give it to investigators or tell them where it could be found. He further maintained that he had only used the pistol to defend himself and his friends at the club.

II. Mr. Carley's Conviction and Sentencing

After the nightclub shootout, Mr. Carley pleaded guilty to being a felon in possession of ammunition in violation of 18 U.S.C. § 922(g)(1). The plea agreement estimated his Sentencing Guidelines range—it calculated his base offense level¹ at 14 and applied a two-level decrease for acceptance of responsibility.² According to the plea agreement, Mr. Carley had a total offense level of 12 and a criminal history category of III, yielding a Guidelines range of 15–21 months in prison. The government indicated it would request a sentence at the bottom of the range.

Meanwhile, the U.S. Probation Office prepared a presentence investigation report (“PSR”). In addition to the Guidelines applied in the plea agreement, the PSR also applied a four-level increase for Mr. Carley’s use or possession of a firearm in connection with another felony offense,³ and another one-level decrease for acceptance of responsibility.⁴ By the PSR’s calculation, Mr. Carley’s total offense level was 15, resulting in a Guidelines range of 24–30 months in prison. Then, based on the severity of Mr. Carley’s offense conduct and criminal history, the PSR recommended an upward variance to 48 months.

¹ USSG § 2K2.1(a)(6)(A).

² USSG § 3E1.1(a).

³ When Mr. Carley was sentenced under the 2024 Manual, the relevant Guideline was USSG § 2K2.1(b)(6)(B). Currently, this Guideline is located at § 2K2.1(b)(7)(B).

⁴ USSG § 3E1.1(b).

Mr. Carley objected to the PSR on two grounds relevant to this appeal: (i) the enhancement for possessing a firearm during another felony offense was inapplicable, since Mr. Carley's unrefuted self-defense claim negated the suggested predicate crimes;⁵ and (ii) the recommended upward variance was excessive and unwarranted. In response, the government agreed with Mr. Carley that the four-level increase did not apply but took no position on his other objections.

In his sentencing memorandum, Mr. Carley elaborated on his second PSR objection, arguing that the upward variance failed to acknowledge that he had armed himself protectively and, afterward, had assisted the government despite the threat of retaliation from Mr. Williams's crew. Further, citing statistics from the Judiciary Sentencing Information ("JSIN") database, Mr. Carley argued that the parties' requested 15-month sentence would avoid unwarranted sentencing disparities:

Data from the U.S. Sentencing Commission's Judiciary Sentencing Information Platform shows that from 2020 to 2024, 1,068 defendants like Mr. Carley were sentenced under primary guideline § 2K2.1, with a Final Offense Level of 12 and a Criminal History Category of III. For the 977 defendants who received a sentence of imprisonment, the average sentence was 14 month(s) and the median sentence was 15 month(s).

R. vol. 1 at 40 (internal citation omitted); *see id.* at 62–63.

⁵ Initially, the PSR suggested that Mr. Carley's conduct amounted to illegal discharge of a firearm in violation of Colorado law. After Mr. Carley objected, the amended PSR maintained that the four-level enhancement applied, but it suggested instead that Mr. Carley's conduct may have constituted felony menacing, second degree assault, or manslaughter (all state law offenses).

At the sentencing hearing's outset, the district court sustained Mr. Carley's first PSR objection, agreeing that the four-level increase did not apply. It thus found, consistent with the plea agreement, that the Guidelines range was 15–21 months.

The court turned next to Mr. Carley's second PSR objection, i.e., the upward variance. Defense counsel reiterated the request for a 15-month sentence, arguing that Mr. Carley had only used the pistol in self-defense, and that others at the club would have been in more danger had he been unarmed when the shooting began. Counsel also highlighted positive aspects of Mr. Carley's background and character. The government largely agreed that a 15-month sentence was appropriate.

The court then allowed Mr. Carley to speak. He told the court that he was a hard-working single father committed to supporting his family and uplifting his community. Mr. Carley shared his plans to move out of state, earn a nursing degree, and become a motivational speaker for youth. And while he apologized for the shootout and expressed condolences for the death of Mr. Williams's brother, he also claimed that he had saved lives by being armed at the club that evening.

After the parties' arguments and Mr. Carley's allocution, the court sentenced him to 30 months in prison—varying upward from the Guidelines range of 15–21 months “because of the serious nature of [his] criminal history and the serious circumstances involved in this particular case.” R. vol. 3 at 57. The court began by noting that it “ha[d] taken the guidelines into account in determining an appropriate sentence,” as well as “the statutory factors which are set forth at 18 [U.S.C. §] 3553(a).” *Id.* at 56. It also adopted the PSR's factual findings. *See id.* at 57.

Explaining its reasons for the sentence, the court granted that Mr. Carley had acted in self-defense during the shootout. But it found that he had unnecessarily placed himself in a situation that precipitated the need for self-defense. In the court's view, once Mr. Carley suspected the possibility of violence, he should not have armed himself—instead, he and the owner should have closed the club. As the court put it, Mr. Carley's choices to work door security and to carry the pistol that night were “really stupid behavior for a person who is a convicted felon.” *Id.* at 58.

The court reasoned further that Mr. Carley's offense was part of his history of risky criminal behavior for which, up to that point, he had only served lenient sentences. To wit:

- In 2011, Mr. Carley was convicted of disorderly conduct. In that incident, he had grabbed a police officer by the collar, ignored commands to release him, wrestled with him, and told him, “Man, fuck that badge. That badge don't mean shit.” R. vol. 3 at 60. He received six months of supervision.
- In 2013, Mr. Carley was convicted of criminal mischief and attempted second-degree burglary. In that incident, he went door to door, banging on doors and body slamming them when no one answered. *Id.* at 60–61. He received a two-year deferred sentence, which was revoked. He then received 60 days in jail followed by four years of probation, which was also revoked.
- In 2015, Mr. Carley was convicted of felony menacing. In that incident, while he was involved in an argument in a 7-Eleven parking lot, he struck a man in the head, causing serious injuries. *Id.* at 61–62. He received 60 days in jail followed by four years of probation, which was revoked and reinstated multiple times.
- In 2016, Mr. Carley was convicted of possession of a controlled substance. In that incident, he was involved in another parking lot argument, and when officers showed up, he tried to run away while ditching a bag of pills. *Id.* at 62. He received two years of probation.

- In 2023, Mr. Carley was convicted of possession of a firearm by a previous offender. In that incident, while he was arguing with security guards outside a nightclub, he retrieved a revolver from his car and gestured toward the guards, then tried to run away from officers who witnessed the incident. *Id.* at 63. He received a 12-month deferred sentence.

After recounting this criminal history in detail, the court concluded that Mr. Carley was undeterred by his prior lenient sentences and run-ins with police, and that he “pose[d] an incredibly serious danger to the community” due to his pattern of failing to “extract himself from bad situations.” *Id.* at 64. Accordingly, the court imposed a 30-month sentence to “send a really strong message” to Mr. Carley, since he had not absorbed “all the messages that litter[ed] his criminal history, . . . and he need[ed] to do so in the future.” *Id.* at 65–66.

This appeal timely followed.

DISCUSSION

I. Legal Framework

Broadly speaking, Mr. Carley suggests that his 30-month sentence is substantively unreasonable because the district court varied upward from the Guidelines range of 15–21 months.⁶

⁶ The government contends that Mr. Carley’s various arguments “sound primarily in the key of procedural reasonableness,” Aplee. Br. at 10, and that he forfeited these arguments by not objecting to his sentence before the district court, *see id.* at 10–13. The nature of Mr. Carley’s sentencing challenge is somewhat nebulous. Initially, he calls the upward variance “procedurally and or substantively unreasonable.” Aplt. Br. at 8. But later, he seems to dispute the upward variance only as substantively unreasonable. *See Reply Br.* at 1–2.

(footnote continues below)

Our review for substantive reasonableness “broadly looks to whether the district court abused its discretion in weighing permissible § 3553(a) factors in light of the totality of the circumstances.”⁷ *United States v. Garley*, --- F.4th ---, 2026 WL 2358661, at *10 (10th Cir. Aug. 14, 2026) (to be published) (internal quotation marks omitted). “[W]e do not reweigh the sentencing factors; rather, we ask whether the sentence fell within the range of rationally available choices that the facts and law at issue can fairly support.” *United States v. Dias*, 174 F.4th 1266, 1281 (10th Cir. 2026) (internal quotation marks omitted).

We conduct our review with “substantial deference to the district court’s application of § 3553(a) factors to the facts of the case.” *United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022). But we do not “just provide a rubber stamp of approval to [its] sentence.” *Guevara-Lopez*, 147 F.4th

As we discuss below, Mr. Carley chiefly faults the district court’s explanation of the § 3553(a) factors to justify varying upward, which implicates a “blurring of the line between procedural and substantive reasonableness.” *Garley*, 2026 WL 2358661, at *11 (internal quotation marks omitted). Ultimately, though, because Mr. Carley’s arguments are directed to whether his lengthier sentence was warranted—as opposed to whether the court adequately explained why it chose the lengthier sentence—we evaluate his sentencing challenge under the rubric of substantive reasonableness. *See United States v. Guevara-Lopez*, 147 F.4th 1174, 1183 (10th Cir. 2025); *United States v. Crosby*, 119 F.4th 1239, 1248 (10th Cir. 2024); *United States v. Cookson*, 922 F.3d 1079, 1090–91 (10th Cir. 2019).

⁷ Under 18 U.S.C. § 3553(a), a sentencing court must consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for a sentence to reflect the seriousness of the crime, deter future criminal conduct, prevent the defendant from committing more crimes, and provide rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5) the Sentencing Commission’s policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need for restitution.

at 1184 (internal quotation marks omitted). Rather, if, as here, a challenged sentence involves an upward variance, we must “ensure that the [court’s] justification is sufficiently compelling to support the degree of the variance.” *Id.* (internal quotation marks omitted). The court properly justifies a variance “when it bases its decision on specific, articulable facts supporting the variance and does not employ an impermissible methodology or rely on facts that would make the decision out of bounds.” *Id.* (internal quotation marks omitted).

II. Analysis

A.

Considering the totality of the circumstances, Mr. Carley’s sentence was substantively reasonable. The district court said it had considered all of the § 3553(a) factors, and it clearly grounded its explanation for the sentence and upward variance in several of those factors.

In terms of the seriousness of the offense, *see* § 3553(a)(1) & (2)(A), the court opined that Mr. Carley could have avoided violating the law that evening, but he chose not to. The proper response to the threat of violence, it said, was “to convince the owner to shut the doors” to the club, not to “get the owner’s gun out of a car,” and choosing the latter response put the club’s patrons at risk. R. vol. 3 at 58. Relatedly, as to his criminal history, *see* § 3553(a)(1), the court voiced concern that Mr. Carley’s offense was the latest entry in his long pattern of “involving himself in incredibly dangerous conduct.” R. vol. 3 at 64. Here, the court thoroughly recounted the circumstances of his prior criminal offenses. It expressed alarm that he is “going

through life causing havoc” by engaging in needless violent conflicts with others, *id.* at 62, and that he “doesn’t even care when officers are involved,” *id.* at 64. *See also* R. vol. 1 at 104 (in the court’s statement of reasons, citing Mr. Carley’s “continued involvement in high-risk situations and poor decisions as evidenced in his criminal history” as a primary reason for varying upward).

Turning to the need to deter future offenses and to protect the public, *see* § 3553(a)(2)(B) & (C), the court observed “a theme” in his prior criminal sentences—namely, they were all lenient, and Mr. Carley often violated their terms by reoffending. R. vol. 3 at 60. Thus, in its view, an upward variance was “perfectly appropriate” to “send a really strong message” to Mr. Carley that he needed to end his pattern of risky behavior, *id.* at 65, since his prior sentences had failed to deter him, and his unnecessary risk-taking made him “a real threat to the public,” *id.*

All told, “the district court’s reason for imposing an upward variance is obvious from the [record] and squarely supports the length of the sentence imposed.” *Garley*, 2026 WL 2358661, at *13.

B.

Mr. Carley advances four arguments against the substantive reasonableness of his sentence. These arguments fail.

1.

Mr. Carley first argues the district court varied upward based on circumstances of the offense that were already accounted for in a Guideline that the court rejected, i.e., § 2K2.1(b)(6)(B). We disagree. As noted above, § 2K1.1(b)(6)(B) adds four

levels if a defendant used or possessed a firearm in connection with another felony offense. And here, because Mr. Carley acted in self-defense, the court concluded that he did not commit a felony offense justifying the enhancement. But even though § 2K2.1(b)(6)(B) was inapplicable due to self-defense, the court still found that Mr. Carley had unreasonably put himself in a situation that compelled self-defense.

As stated earlier, the court found that Mr. Carley chose to carry a firearm illegally—thereby risking a shootout and harm to bystanders—rather than trying to close the club. It characterized this choice as “crazy and unnecessary and . . . the type of behavior that Mr. Carley should never ever have even gotten close to.”

R. vol. 3 at 58. The court did not abuse its discretion by varying upward based on the dangers posed by Mr. Carley’s offense conduct. *See* § 3553(a)(2)(A); *see also United States v. Rocha*, 145 F.4th 1247, 1276 (10th Cir. 2025) (upward variance was substantively reasonable where the offense conduct was “completely avoidable, irresponsible, [and] reckless”) (internal quotation marks omitted).

2.

Closely related, Mr. Carley argues the district court relied on an incorrect understanding of the facts underlying the offense. According to him, the court found that he agreed to work door security even though he “knew that there would be trouble when he arrived at the club.” Aplt. Br. at 13. “In fact,” he says, “the majority of the evening had been ‘peaceful,’” *id.*, and he “had no indication of trouble until it had already begun,” when Mr. Williams showed up at closing time, *id.* at 12. Mr. Carley seems to imply that the court varied upward based on a

misperception that he went to the club looking for trouble, when really, he was forced to fend off trouble that was thrust upon him. We view the court's reasoning differently. In relevant part, it said:

The defendant shouldn't have been volunteering to provide security when the owner let the defendant know that there could be trouble. The response should have been to shut the doors. It shouldn't have been to, oh, yeah, well, I'll go get the owner's gun out of a car and then go stand by the door again. That's not protective behavior. That's really stupid behavior for a person who is a convicted felon.

R. vol. 3 at 58.

On our reading, the court's remarks reflect that it was less concerned with *when* Mr. Carley suspected trouble than it was with *how he responded* to his suspicions: He chose to arm himself illegally. We will not disturb the court's finding that, under the circumstances, Mr. Carley's decision to carry a firearm was unwise and warranted a longer sentence. *See Maldonado-Passage*, 56 F.4th at 842 (“substantial deference” is owed to the court's application of § 3553(a) to the facts).

3.

Mr. Carley next argues the district court failed to address mitigating factors raised by defense counsel and elaborated in the allocution. Regarding his personal background, he claims the court overlooked “his academic excellence from elementary school and obtaining certificates, fatherhood to his son, mentoring youth as a coach, being an adult caretaker, and positive employment record.” Aplt. Br. at 15. And as to his criminal history, he says the court ignored his “history of self-defense” and “voluntarily cooperating with law enforcement.” *Id.*

The problem is that the court *did* discuss most of these factors⁸ as part of its holistic assessment of Mr. Carley’s “history and characteristics.” *See* § 3553(a)(1); *see also* R. vol. 3 at 58–59 (discussing his scholastic record); *id.* at 64–65 (discussing his parenting). The court also told Mr. Carley that his plans “to get out of Colorado, to get the nursing certificate, [and] to become a motivational speaker” were “all really good plans.” *Id.* at 69. Mr. Carley’s true objection seems to be that the court viewed these factors as less “mitigating” than he would prefer. He effectively asks us to re-weigh factors already presented to the court. This we cannot do. *See Dias*, 174 F.4th at 1281. The court, in other words, did not abuse its discretion by varying upward based on the weight it accorded—or did not accord—these factors.

4.

Finally, Mr. Carley argues the district court failed to consider the need to avoid unwarranted sentencing disparities as required by § 3553(a)(6).⁹ Citing nationwide sentencing data from the JSIN platform, he contends that his 30-month sentence far exceeds the average sentence (15 months) and median sentence

⁸ The court need not have specifically mentioned every mitigating factor on the record, as “[w]e do not require a ritualistic incantation to establish consideration of a legal issue.” *United States v. Kelley*, 359 F.3d 1302, 1305 (10th Cir. 2004) (internal quotation marks omitted).

⁹ Mr. Carley says that “[f]ailure to consider [this] 3553(a) factor is *procedural* error.” *Aplt. Br.* at 13 (emphasis added). But as noted above, *see* n.8, *supra*, the gravamen of his complaint is that the district court’s engagement with the § 3553(a) factors did not justify the increased length of his sentence. We therefore read his “unwarranted disparities” argument as a challenge to his sentence’s substantive reasonableness. *See, e.g., Cookson*, 922 F.3d at 1090.

(14 months) for defendants with the same offense level, criminal history category, and primary Guideline as him.

Previously, we have faulted district courts for inadequately explaining how they weighed the risk of unwarranted sentencing disparities (or related JSIN data) while analyzing the § 3553(a) factors. *See Guevara-Lopez*, 147 F.4th at 1188; *Crosby*, 119 F.4th at 1251; *Cookson*, 922 F.3d at 1094. For at least three reasons, however, that concern does not arise here.

First, “courts generally address this factor through the use of the guideline range itself.” *United States v. Doty*, 150 F.4th 1351, 1356 (10th Cir. 2025); *accord United States v. Gantt*, 679 F.3d 1240, 1248–49 (10th Cir. 2012). The court followed this practice here—it considered the advisory Guidelines range and decided it was too low to deter Mr. Carley from his high-risk criminal behavior or to protect the public from said behavior. On the record before us, this assessment was reasonable.

Second, “the district court didn’t need to say explicitly that it had considered unwarranted sentencing disparities.” *United States v. Naranjo-Aguilar*, 154 F.4th 1251, 1260 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 1855 (2026). To the contrary, “even where a district court does not explicitly discuss the potential for unwarranted sentencing disparities, it does not abuse its discretion unless it fails to provide an explanation that justifies the extent of [its upward] variance.” *Dias*, 174 F.4th at 1282 (internal quotation marks omitted). And the court amply justified its variance by reference to several of the other § 3553(a) factors—namely, Mr. Carley’s offense conduct, criminal history, the need for deterrence, and the need to protect the public.

Third, Mr. Carley’s reliance on JSIN data is unavailing. Under § 3553(a)(6), a court must consider whether its sentence creates disparities “among defendants with *similar* records who have been found guilty of *similar* conduct.” (emphases added). But “bare national statistics do not shed light on the extent to which [those] sentences . . . involve defendants that are similarly situated to” Mr. Carley. *United States v. Valdez*, 128 F.4th 1314, 1319 (10th Cir. 2025) (internal quotation marks omitted). More to the point, if, as here, “the district court gives an otherwise sufficient explanation for the imposed sentence, bare national statistics without specific comparators cannot defeat the sufficiency of the district court’s explanation.” *Guevara-Lopez*, 147 F.4th at 1187 (internal quotation marks omitted). So, because the court adequately explained its variance, Mr. Carley’s JSIN data does not mandate a finding of substantive unreasonableness even if it might suggest some disparity.

Accordingly, the district court did not abuse its discretion by failing to consider or address the need to avoid unwarranted sentencing disparities.

CONCLUSION

For the foregoing reasons, we AFFIRM the district court’s sentence.

Entered for the Court

Jerome A. Holmes
Chief Judge