

United States Court of Appeals
For the Eighth Circuit

No. 26-1453

United States of America

Plaintiff - Appellee

v.

Kennis Ray Walker

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: August 21, 2026

Filed: August 28, 2026

[Unpublished]

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

PER CURIAM.

Kennis R. Walker pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court¹ enhanced his sentence under

¹The Honorable Kristine G. Baker, Chief Judge, United States District Court for the Eastern District of Arkansas.

U.S.S.G. § 2K2.1(b)(7)(B). He appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

I.

In July 2020, the North Little Rock Police Department responded to a motel to investigate a reported disturbance. Officers spoke with the victim, who said Walker drew a gun on him.

Walker consented to a search of his motel room. Officers found a handgun, a magazine, a bullet, and drug paraphernalia. Walker was charged with being a felon in possession of a firearm. He moved to suppress the evidence seized from his motel room.

At the suppression hearing, Officer Kenneth Livingston testified that the motel's security footage showed Walker drawing a handgun on the victim. Officer Randy Flippin testified that he interviewed the victim at the scene. The victim told Officer Flippin that Walker pulled a handgun from his waistband and said to the victim, "Is this what you want?" The district court denied the motion to suppress. Officer Flippin testified to the same at the sentencing hearing, over Walker's objection.

The district court sentenced Walker to 80 months in prison and three years of supervised release. Relying on the officers' testimony, the court overruled Walker's objection to a four-level sentencing enhancement for possessing the handgun in connection with another felony offense—aggravated assault. He appeals.

II.

Walker argues the district court erred in relying on the officers' hearsay testimony because it was not sufficiently reliable. "This court reviews a district court's determination of whether hearsay evidence is sufficiently reliable for

sentencing purposes for abuse of discretion.” *United States v. Bastian*, 603 F.3d 460, 466–67 (8th Cir. 2010).

The victim made statements to Officer Flippin shortly after the reported disturbance. Officer Flippin testified consistently at the suppression and sentencing hearings. His testimony was corroborated by Officer Livingston’s description of the security footage. *See United States v. Sheridan*, 859 F.3d 579, 583 (8th Cir. 2017) (“In reviewing the reliability of hearsay and double hearsay evidence, we have considered factors such as the consistency of the hearsay testimony, the timing and nature of the declarant’s statements, and the witness’s impressions of the declarant’s demeanor, as well as other corroborating evidence.”); *United States v. Wailes*, 44 F.4th 823, 826–27 (8th Cir. 2022) (same). Both officers gave their testimony under oath and subject to the penalties of perjury. *See United States v. Cross*, 888 F.3d 985, 993 (8th Cir. 2018) (“We have repeatedly upheld the consideration of grand jury testimony at sentencing; it has indicia of reliability because it was given under oath and subject to the penalties of perjury.”) (internal quotation marks omitted).

The district court did not abuse its discretion in determining the officers’ testimony was sufficiently reliable.

III.

Walker contends that, even if properly considered, the hearsay testimony was insufficient to establish aggravated assault, precluding the enhancement. This court reviews “the district court’s construction and application of the Guidelines de novo and its factual findings for clear error, keeping in mind that the Government must prove by a preponderance of the evidence each of the facts necessary to establish a sentencing enhancement.” *United States v. McKinney*, 139 F.4th 690, 696 (8th Cir. 2025) (internal quotation marks omitted).

A four-level increase is required when a defendant with an offense level of 18 or higher “used or possessed any firearm or ammunition in connection with another

felony offense.” U.S.S.G. § 2K2.1(b)(7)(B). Applying § 2K2.1(b)(7)(B) “when the defendant has not been convicted of another state or federal felony offense,” requires the district court find “by a preponderance of the evidence that another felony offense was committed, and that use or possession of the firearm facilitated that other felony.” *United States v. Holm*, 745 F.3d 938, 940 (8th Cir. 2014) (cleaned up); *United States v. Deberry*, 137 F.4th 729, 733 (8th Cir. 2025) (same).

Relying on *Swaim* and *Schwede*, Walker claims the evidence was insufficient to establish aggravated assault because he neither pointed the handgun at the victim nor used a loaded firearm. See *Swaim v. State*, 79 S.W.3d 853, 855–56 (Ark. Ct. App. 2002); *Schwede v. State*, 896 S.W.2d 454, 455–56 (Ark. Ct. App. 1995).

But neither *Swaim* nor *Schwede* holds that having a loaded gun or pointing a firearm at someone is a prerequisite to aggravated assault. See *Rodriquez v. State*, 735 S.W.3d 530, 535 (Ark. Ct. App. 2026) (holding that pointing a firearm at the victims was not required to establish aggravated assault); *Holloway v. State*, 711 S.W.2d 484, 486 (Ark. Ct. App. 1986), *overruled in part on other grounds by Flurry v. State*, 720 S.W.2d 699 (Ark. 1986) (holding that aggravated assault may be established even without direct evidence that the firearm was loaded). Instead, “[a] person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely . . . [d]isplays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person.” Ark. Code Ann. § 5-13-204(a)(2). Walker drew the handgun and asked the victim, “Is this what you want?” His statement indicated an intent to use the handgun and placed the victim at risk of being shot. This evidence was sufficient to establish aggravated assault.

Walker also argues that the government failed to rebut an affirmative defense to aggravated assault. But he raised none. The district court did not clearly err in finding that Walker committed aggravated assault.

* * * * *

The judgment is affirmed.
