

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-3226

UNITED STATES OF AMERICA

v.

CEDRICK HODGES,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Zahid N. Quraishi, No. 3:18-cr-00528-001

Before: PORTER, MATEY, AND AMBRO, *Circuit Judges*
Argued: June 3, 2026; Filed: August 27, 2026

NONPRECEDENTIAL OPINION*

AMBRO, *Circuit Judge*

Months after his release from a seventeen-year prison sentence for kidnapping, robbery, and aggravated sexual assault, Cedrick Hodges was arrested for an armed carjacking spree that left multiple people seriously injured. He was sentenced to life imprisonment and now appeals his convictions and sentence. Although some of his arguments are stronger than others, none ultimately succeeds. Therefore, we affirm.

I. BACKGROUND

Between 9:00 and 9:30 p.m. on December 16, 2017, a man armed with a shotgun attempted three carjackings near an apartment complex in Hamilton, New Jersey. Police arrived around 9:27 p.m. Eyewitnesses agreed the perpetrator was a black man wearing a black ski mask on his face. Beyond that, descriptions varied slightly: different witnesses

said the man wore a gray hoodie, a black hoodie, a black jacket with a white hood sticking out, or possibly a black jacket and burgundy pants. While patrolling the area, one officer happened upon the scene of the third carjacking, just as the suspect shot the driver. The suspect ran, but the officer was unable to pursue him because the victim required immediate medical attention. He radioed other officers, who moved to intercept the suspect.

Around 9:33 p.m., those officers saw Cedrick Hodges walking hurriedly across a street. Matching Hodges to the description of the suspect, the officers began to follow him. He ran down an alley; they pursued. He slipped, fell, and was arrested around 9:34 p.m. wearing a black jacket over a gray hoodie and black jeans. He was about half a mile from the apartment complex.

The arresting officer conducted a search incident to arrest and found two pairs of gloves, a black ski mask, and eighteen 12-gauge shotgun shells on Hodges's person. Officers asked where the shotgun was, and Hodges responded that he didn't know what they were talking about and that he'd found the shells.

In February 2023, a Second Superseding Indictment charged Hodges with one count of carjacking (in violation of 18 U.S.C. § 2119(1)), one count of brandishing a firearm during a crime of violence (in violation of 18 U.S.C. § 924(c)(1)(A)(ii)), two counts of attempted carjacking resulting in serious bodily injury (in violation of 18 U.S.C. § 2119(2)), and one count of possessing a firearm as a felon (in violation of 18 U.S.C. § 922(g)(1)).

Before trial, Hodges sought permission to impeach the arresting officer with the officer's 2022 conviction for driving while intoxicated as well as the facts surrounding that

conviction. He argued the evidence was admissible under Federal Rules of Evidence 609(a)(2), 608(b), and 403. The District Court denied that motion, agreeing that parts of the evidence were admissible under Rule 608(b) but excluding those parts under Rule 403.

The jury convicted Hodges on all counts. Under the U.S. Sentencing Commission Guidelines, the Probation Office calculated a sentencing range of 294 to 346 months' incarceration based on an offense level of 35, a criminal history category of III, and a mandatory consecutive minimum on the brandishing charge. Although it did not object to the report's omission of a 2-level enhancement for obstruction of justice, the Government later requested that enhancement in its sentencing memorandum. It also requested an upward departure to criminal history category VI under § 4A1.3(a) of the Guidelines, which would place life imprisonment within the Guidelines range. Finally, it requested a sentence of life imprisonment.

The defense memorandum opposed the Government's requests and asked, in turn, for a downward variance to 20 years' imprisonment based on Hodges's childhood trauma, dysfunctional home environment, and lack of mental health support as a youth. It included a mitigation report from a retired probation officer who interviewed Hodges and his family, reviewed his medical and educational records, and drew upon research into developmental psychology and recidivism.

The District Court acknowledged that the Government had failed to make a timely objection to the presentence report's omission of an obstruction enhancement, but it applied the enhancement anyway because it found Hodges had lied at trial. The Court also imposed

the Government’s requested upward departure to criminal history category VI. Together, this yielded a Guidelines range of 444 months to life in prison. The Government then argued for an upward variance to offense level 40, which did not affect the Guidelines range, and again asked for a life sentence. The Court granted the upward variance.

During defense counsel’s presentation, the District Court expressed skepticism about certain facts in the mitigation report that were not previously disclosed to the Probation Office. Although explicitly “not taking the position” that Hodges was “not being truthful about his upbringing,” the Court attributed “limited weight” to “information that is provided after the fact when it appears it could have been disclosed to the probation office at the time that the draft presentence report was being prepared.” App. 1400–01.

After defense counsel concluded, the Court stated, “Mr. Hodges, this is your sentencing hearing. [Defense counsel], I don’t know if you’ve discussed this. I presume you have. Mr. Hodges is not required to speak at his own sentencing hearing.” App. 1404–05. Defense counsel responded, “He doesn’t intend to give a statement, Your Honor.” *Id.* at 1405. The District Court said, “No statement whatsoever. I appreciate that.” *Id.* Hodges did not speak.

The District Court sentenced Hodges to life imprisonment plus a consecutive term of 262 months, which reduced to a total term of life imprisonment.

II. ANALYSIS

Hodges raises six issues on appeal. The District Court had subject matter jurisdiction under 18 U.S.C. § 3231. We have appellate jurisdiction over the challenges to the conviction under 28 U.S.C. § 1291, and to the sentence under 18 U.S.C. § 3742(a).

A. Motion to Suppress

First, Hodges challenges the Court’s denial of his suppression motion, which argued that the evidence from the search should be suppressed because the police did not have probable cause to arrest him. We review its factual findings for clear error and exercise plenary review over its legal determinations, including its probable cause determination. *United States v. Navedo*, 694 F.3d 463, 467 n.4 (3d Cir. 2012); *United States v. Kithcart*, 134 F.3d 529, 531 (3d Cir. 1998) (citing *Ornelas v. United States*, 517 U.S. 690, 697 (1996)).

The constitutionality of a warrantless search following arrest turns on whether the officers had probable cause to make the arrest. *Kithcart*, 134 F.3d at 531 (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). To determine that, “we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer,” provided “a reasonable ground for belief of guilt.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (internal quotation marks omitted).

Hodges argues he did not match the description of the suspect. He contends that because he was not wearing a ski mask, holding the shotgun, or wearing burgundy pants at the time of the arrest, the “most distinctive and inculpatory descriptors . . . categorically excluded [him].” Appellant Br. at 36.

Although there were conflicting descriptions of the suspect, the last description that police dispatch provided officers before Hodges's arrest was that the suspect was a black male wearing a black jacket with a white hood sticking out and a ski mask. "Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts *known to the arresting officer* at the time of the arrest." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (citing *Pringle*, 540 U.S. at 371) (emphasis added). Therefore, the description of the suspect radioed to the arresting officers is the relevant description for the determination of probable cause. When Hodges was arrested, he was wearing a black jacket, a gray sweatshirt, and black jeans. The absence of the ski mask is not dispositive because it is easily removable; in fact, one would expect a suspect fleeing a crime to remove it. And a witness's inability to distinguish between a gray or white sweatshirt under the lighting conditions at 9:00 p.m. in December is likewise unsurprising.

In addition to matching the description of the suspect, Hodges was "less than a half mile" from the first two attempted carjackings on a "below freezing" night with little foot traffic. App. 303–08, 712. And he "took off running" as police began to close in on him. "Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000).

To summarize, Hodges was near the scene of the crime, matched the description of the suspect, and took off running as soon as police neared him. Reasonable police officers who saw Hodges under these circumstances would have probable cause to believe he was the

culprit they sought. Accordingly, we affirm the District Court's denial of Hodges's suppression motion.

B. Impeachment of Police Officer

Second, Hodges challenges the District Court's refusal to permit cross-examination of the officer who conducted the search regarding his 2022 driving-while-intoxicated offense. During that offense, the officer in question rear-ended another vehicle three times at a red light, attempted to blame the other driver, told police he drank only "one to two beers" and said, "you know I'm an officer, right?" App. 213–14. He also requested a union representative before taking a breathalyzer exam. The exam revealed the officer had a blood alcohol content of approximately 0.24, three times the legal limit.

Hodges sought to introduce this evidence to impeach the officer under Federal Rules of Evidence 608(b) and 609. He also argued its preclusion would violate his Sixth Amendment right to confrontation. The Government conceded the officer's statements regarding the amount of alcohol he'd consumed were false and admissible under Rule 608(b) but advocated for their exclusion under Rule 403.

The District Court held that the conviction was not admissible under Rules 609 or 608(b), but that the officer's false statements regarding his alcohol consumption were admissible under Rule 608(b). However, it excluded those statements under Rule 403. As for the statement that he was a police officer and his request for a union representative, the Court determined that Rule 608(b) would allow Hodges only to ask the officer whether he

told the truth to police—not to use the statements as evidence the officer sought preferential treatment.

On appeal, Hodges challenges the District Court’s rulings under Rule 403 and the Confrontation Clause.¹ We take each issue in turn.

B.1 Rule 403 Balancing

Federal Rule of Evidence 403 allows courts to “exclude relevant evidence if its probative value is substantially outweighed by” the risk of dangers, including “unfair prejudice, confusing the issues, [or] misleading the jury.” We review a district court’s decision to exclude evidence “for abuse of discretion, and such discretion is construed especially broadly in the context of Rule 403.” *United States v. Sussman*, 709 F.3d 155, 173 (3d Cir. 2013) (quoting *United States v. Mathis*, 264 F.3d 321, 326–27 (3d Cir. 2001)).

The District Court concluded the officer’s false statements were of little probative value because of the differences between the context in which they were made and the context in which his honesty was relevant—testifying about a criminal suspect and arrest. The Court noted the statements were about the officer himself and made while he was off duty and intoxicated. Additionally, the Court reasoned the officer’s credibility was not in question, as

¹ Hodges “maintains that *all* of the proposed impeachment was permissible under Rule 608” but “focuses on the evidence the government conceded fell within Rule 608(b)’s reach.” Opening Br. 44 (emphasis in original). He does not further discuss the District Court’s rulings under Rule 608. Accordingly, he forfeits any challenge to them. *United States v. Pelullo*, 399 F.3d 197, 222 (3d Cir. 2005).

Hodges had not raised any factual issues regarding his arrest and there was bodycam and dashcam footage of it.

On appeal, Hodges contends that a testifying officer's credibility is always at issue. Further, the credibility of the officer turned out to be important when Hodges testified at trial that he believed an officer planted the ski mask on him. Although that testimony had not yet occurred at the time of this pretrial ruling, Hodges maintains he "was not required to lay out his defense before trial." Opening Br. 45. Further, the camera footage did not show the discovery of the ski mask.

On the other side of the balance, the District Court reasoned that admission of statements from the incident could mislead and confuse the jury. It had determined that the conviction itself was inadmissible, and it reasoned the jury was likely to focus more on the conviction than the fact that the officer had made false statements. Hodges contends it is illogical for the existence of a DWI conviction to shield the officer's related misconduct from later scrutiny.²

² Hodges alleges we have previously "warned against excluding probative evidence based on a perceived prejudice to the government." Opening Br. 46 (citing *Gov't of V.I. v. Carino*, 631 F.2d 226, 230 (3d Cir. 1980)). In *Carino*, we stated that "there should be no balancing of prejudice to the prosecution before the defense may present its case." 631 F.2d at 230. We have never repeated this curious statement in another case, and it is unclear where it comes from. *Carino* cited *United States v. Nevitt*, 563 F.2d 406, 408 (9th Cir. 1977), but *Nevitt* was a case that read certain words in Rule 609(a) as constraining courts to consider only prejudice to the defendant, not the prosecution. Not only is that holding limited to the unique language of a different rule, even its language was later amended specifically to foreclose such an interpretation. See *United States v. Rowe*, 92 F.3d 928, 933

Hodges raises reasonable arguments. But the District Court’s decision “cannot be reversed merely because we, as members of a reviewing court, possess a different view concerning the probative value or prejudicial effect of the challenged evidence.” *United States v. Universal Rehab. Servs. (PA)*, 205 F.3d 657, 665 (3d Cir. 2000). Instead, “to justify reversal, a district court’s analysis and resulting conclusion must be arbitrary or irrational.” *Id.* (internal quotation marks omitted). Reasonable minds could differ on the probative value of this evidence. However, the Court’s analysis was not arbitrary or irrational. Accordingly, out of “great deference” to it, we must affirm. *Id.*

B.2. The Confrontation Clause

Hodges urges us to reverse on the basis of his Confrontation Clause right to cross-examine witnesses against him. He is right that the District Court’s brisk declaration that exclusion under Rule 403 cannot violate the Sixth Amendment is incorrect. *Smith v. Arizona*, 602 U.S. 779, 794 (2024) (“Evidentiary rules . . . do not control . . . the scope of a federal constitutional right.”). But Hodges does not establish that the exclusion *did* violate the Sixth Amendment either.

To “determine whether a particular limitation on cross-examination violated a defendant’s rights under the Confrontation Clause,” we employ a “two-part test.” *United States v. Noel*, 905 F.3d 258, 268 (3d Cir. 2018).

(9th Cir. 1996) (“[*Nevitt*] was expressly abrogated by the 1990 amendments to the Federal Rules of Evidence.”).

First, we determine whether the limitation significantly inhibited the defendant's effective exercise of her right to inquire into the witness's motivation in testifying. Then, if it did, we ask whether the limitation fell within those reasonable limits which a trial court, in due exercise of its discretion, has authority to establish. Whether the trial court abused its discretion . . . depends on whether the jury had sufficient other information before it, without the excluded evidence, to make a discriminating appraisal of the possible biases and motivation of the witness or, conversely, whether without the limitation, a reasonable jury could have reached a significantly different impression of the witness's credibility.

Id. (citation modified).

Applying this test, we have upheld a district court's decision to prohibit cross-examination into a witness's bipolar disorder diagnosis and treatment. *United States v. Fattah*, 914 F.3d 112, 181 (3d Cir. 2019). We reasoned that the restriction was not a significant limitation of the defendant's right to inquire into the witness's memory or perception, which the defendant was otherwise free to question. Further, the defendant failed to explain why the evidence would be useful for impeachment. *Id.* Without "any particularized reason to doubt the credibility of the witness for medical reasons," the district court did not abuse its discretion by concluding that any mention of the disorder would unnecessarily confuse the jury and stigmatize the witness. *Id.* at 181–82. Even though the witness's testimony was the only evidence of an element of the crime, "a district court may always place reasonable limits on cross-examination" to avoid dangers like confusion or prejudice "no matter the importance of a witness to any party." *Id.* at 182.

The testimony at issue here has more probative value than that in *Fattah*. By lying during his traffic stop, the officer who arrested Hodges demonstrated a propensity to be untruthful. However, Hodges fails to show that admission of the evidence would have

given the jury a “significantly” different impression of the officer’s credibility *as a witness in this case*. The lie he told during the stop related solely to him and occurred while he was off duty and intoxicated. Therefore, although the District Court’s reasoning was flawed, we affirm that excluding this line of impeachment did not violate Hodges’s Sixth Amendment right to cross-examination.

C. Invitation to Allocute

Moving on to sentencing, Hodges contends the District Court violated Federal Rule of Criminal Procedure 32(i)(4)(A) by failing to extend a personal invitation to allocute. “Because he did not object at sentencing, we review for plain error.” *United States v. Greenspan*, 923 F.3d 138, 156 (3d Cir. 2019). This means we “reverse only if (1) there was an ‘error’; (2) the error was ‘plain’; (3) the error prejudiced or ‘affect[ed] substantial rights’; and (4) not correcting the error would ‘seriously affect[] the fairness, integrity or public reputation of judicial proceedings.’” *Id.* at 147 (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)) (alterations in original). “Reversing a plain error ‘is permissive, not mandatory.’” *Id.* at 157 (quoting *Olano*, 507 U.S. at 735).

At least the first two prongs are met here, but Hodges fails at the fourth: the error could not seriously affect the fairness of the proceeding because Hodges does not assert he intended to allocute even if given the opportunity.

C.1 Plain Error

“Before imposing sentence,” a district court must “address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence.”

Fed. R. Crim. P. 32(i)(4)(A)(ii). To fulfill this obligation, “[a] sentencing judge must ‘unambiguously address’ the defendant himself, not just his counsel, and ‘leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing.’” *Greenspan*, 923 F.3d at 156 (quoting *Green v. United States*, 365 U.S. 301, 305 (1961)). In *Greenspan* we determined that a district court failed to do so when it twice “asked sentencing counsel if [the defendant] wanted to say anything” but never “asked [the defendant] himself whether he wanted to speak.” *Id.* And that error “was obvious on the face of the record, so it was plain.” *Id.*

The facts here are similar. The District Court briefly addressed Hodges only to say, “[T]his is your sentencing hearing.” App. 1404–05. It turned to Hodges’s counsel from there on, expressly directing the rest of its remarks to counsel and referring to Hodges in the third person. Even when addressing counsel, the Court did not state that Hodges had a right to allocute, only that he was not required to speak. These facts leave ample “room for doubt” as to whether Hodges was issued a personal invitation to allocute. *See Greenspan*, 923 F.3d at 156. As such, “[t]here was error and it was plain.” *Id.*

C.2 Prejudice to Substantial Rights

When a district court (1) fails to address a defendant personally and inquire of his intention to allocute and (2) could have imposed a lower sentence than it did, we presume

prejudice to substantial rights. *United States v. Adams*, 252 F.3d 276, 287 (3d Cir. 2001).³

The Government argues that the facts in this case rebut that presumption. We need not decide the issue because, in any event, Hodges cannot succeed on the fourth prong.

C.3 Serious Effect on the Fairness, Integrity, or Public Reputation of Judicial Proceedings

During the sentencing in *Greenspan*, defense counsel said, “We are taking an appeal[,] so I have advised him we waive allocution.” 923 F.3d at 156. We observed “that Greenspan strategically skipped allocution while expressing remorse on video and in writing to get a much lower sentence.” *Id.* at 157. We noted that “allocuting would have put Greenspan on the horns of a dilemma: If he had allocuted and admitted guilt, that admission could have doomed his appeal. If he had allocuted without admitting guilt, he could have seemed unrepentant and unworthy of leniency.” *Id.* at 158. By “avoiding the

³ The Government contends that the Supreme Court has since abrogated *Adams*’s holding, citing *Puckett v. United States*, 556 U.S. 129 (2009), for its statement that “[e]liminating the third plain-error prong through semantics makes a nullity of *Olano*’s instruction that a defendant normally ‘must make a specific showing of prejudice’ in order to obtain relief.” *Id.* at 142 (quoting *Olano*, 507 U.S. at 735). This carefully selected quotation leaves out important context from *Puckett*. There, the defendant argued that any defendant whose plea agreement was violated by the Government will always be able to show prejudice. The Supreme Court rejected that proposition, reasoning that “[a]ny trial error can be said to impair substantial rights if the harm is defined as ‘being convicted at a trial tainted with [the relevant] error.’” *Id.* This analysis does not implicate *Adams*, which focused on circumstances unique to the right to a personal invitation to allocute, not a general right to be free from conviction prejudiced by any trial error. 252 F.3d at 288.

risks of live remarks” but submitting a “carefully crafted” written statement and video, Greenspan made a “strategic decision” that “we refuse[d] to reward” with reversal. *Id.*

The same strategic incentives applied here. Hodges does not contend that he would have allocuted if he had been properly addressed during his sentencing hearing. Though we avoid speculating as to the effectiveness of any given allocution, *Adams*, 252 F.3d at 287, it is hardly speculative to say that an opportunity to allocute did not *seriously* affect the proceedings on the facts of this case.

Hodges distinguishes this case from *Greenspan* by pointing out that the defendant there had functionally allocuted through the video and written statements. That is a factual difference, but it is peripheral to the central point that declining to allocute can be a strategic decision. In *Greenspan*, counsel’s statement and the defendant’s alternate submissions provided evidence of that strategic decision. Here, the evidence is Hodges’s unwillingness to assert that he would have exercised the right he now purports to seek. And where a defendant has already decided not to allocute as a matter of strategy, the District Court’s failure to invite him to do so cannot have had a serious effect on the fairness, integrity, or public reputation of judicial proceedings. Therefore, the District Court’s error survives plain-error review.

D. The Government’s Untimely Request for an Obstruction Enhancement

Hodges’s second sentencing challenge involves the Government’s untimely request for an obstruction-of-justice enhancement, which it made in its sentencing memorandum but not in an objection to the presentence report. He does not dispute that his conduct qualified

for the enhancement, only the District Court’s application of it despite the untimeliness of the Government’s request. We review this preserved procedural issue for abuse of discretion. *United States v. Tomko*, 562 F.3d 558, 567 (3d Cir. 2009) (*en banc*). There is not an abuse of discretion here.

Federal Rule of Criminal Procedure 32 establishes a timeline for pre-sentencing procedure. “Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections . . . to . . . sentencing guideline ranges.” Fed. R. Crim. P. 32(f)(1). After receiving objections, the probation officer may discuss them with the parties, investigate further, and revise the presentence report. Fed. R. Crim. P. 32(f)(3). Then, at least seven days before sentencing, the probation officer must submit the final presentence report and an addendum explaining any unresolved objections. Fed. R. Crim. P. 32(g). At sentencing, the court “may, for good cause, allow a party to make a new objection at any time before sentence is imposed.” Fed. R. Crim. P. 32(i)(1)(D). We review a district court’s good-cause determinations for abuse of discretion. *United States v. Desu*, 23 F.4th 224, 232 (3d Cir. 2022).

Here, Hodges’s presentence report did not apply an obstruction-of-justice enhancement, and the Government did not object to that omission. PSR ¶ 37; S. App. 11. But “upon further consideration of the issue,” the Government requested the enhancement in its sentencing memo. S. App. 11–13. It concedes it thereby “missed Rule 32’s deadline for objections.” Gov’t Br. 46. But it argues the District Court considered the request pursuant to “good cause” under Rule 32(i)(1)(D).

At sentencing, the Court acknowledged “[t]he objection should have been made at the time the draft presentence report was received,” but decided to consider it because a sentencing court “has an independent duty to determine what the appropriate sentencing guidelines are for an applicable case.” App. 1360. It went on to find Hodges’s trial testimony untruthful and applied the two-level enhancement for obstruction of justice.

The Seventh Circuit recently held under nearly identical circumstances that a district court had reasonably exercised its discretion by considering an untimely objection from the Government. *United States v. Slater*, 168 F.4th 1044, 1049–51 (7th Cir. 2026). As in our case, the sentencing judge in *Slater* “properly recognized . . . she had ‘the ultimate responsibility’ to ensure that the Guidelines range was correct.” *Id.* at 1049 (quoting *Rosales-Mireles v. United States*, 585 U.S. 129, 134 (2018)). The Circuit Court reasoned that “failing to do so risked serious procedural error” and that unquestionably the Government’s objection “materially affected the range.” *Id.* at 1050. Although “the judge did not specifically couch her ruling in good-cause terms,” as would have been “[i]deal[],” good cause was a “uniquely flexible, fact-specific, and capacious concept.” *Id.* (internal quotation marks omitted) (citing *Good Cause*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defining the term as a “legally sufficient reason”)). Accordingly, “given [the] highly deferential standard of review,” the Seventh Circuit saw “no reason to second-guess the judge’s exercise of discretion.” *Id.*

We face each of these circumstances here, and the Seventh Circuit’s reasoning is sound. Here, too, the District Court acknowledged the untimeliness but chose to consider the

objection anyway because of its independent responsibility to calculate the correct Guidelines range. There is no dispute that the two-level enhancement was an important part of the Guidelines calculation.

Like the defendant in *Slater*, Hodges “resists this conclusion on two grounds.” *Id.* First, he argues “that Rule 32(f)’s deadlines would be meaningless if there was no consequence for a party failing to timely raise objections.” Reply Br. 21–22; *cf. Slater*, 168 F.4th at 1050. But an untimely objector gives up the right to a ruling under Rule 32(i)(3)(B)⁴ and exposes itself to the district court’s discretion, potentially losing out on a ruling if the district court finds no good cause. Hodges does not provide reason to think the Federal Rules of Criminal Procedure intended any other consequence.

Second, Hodges contends the District Court violated our holding in *United States v. Payo*, 135 F.4th 99, 108 (3d Cir. 2025), which forbids district courts from “imposing a sentencing enhancement by relying on an argument the Government did not make.” According to Hodges, the Government forfeited the enhancement by failing to make a timely argument for it. Opening Br. 59–60; *cf. Slater*, 168 F.4th at 1050.

This argument is misplaced because “Rule 32—not waiver doctrine—governs [presentence report] objections.” *Slater*, 168 F.4th at 1050. Under Rule 32, the District Court had the discretion to excuse untimeliness for good cause. *Id.* Hodges takes issue with

⁴ Federal Rule of Criminal Procedure 32(i)(3)(B) requires sentencing courts to rule on properly raised objections “or determine that a ruling is unnecessary.”

the Court’s statement that it must consider the enhancement “whether [the Government] raises the issue or not.” App. 1361. Because the Government did raise the issue, whether the Court would have applied the enhancement anyway is hypothetical.

We strongly encourage district courts to make findings of good cause expressly. But under the circumstances and the standard of review, we affirm the District Court’s permission here.

E. Upward Departure Under U.S.S.G. § 4A1.3

Hodges also challenges his sentence by claiming the District Court improperly exercised its discretion when departing under U.S.S.G. § 4A1.3 (which has since been deleted by the 2025 amendments). Subsection (a)(1) allowed for an upward departure if “reliable information indicates that the defendant’s criminal history category substantially underrepresents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.” At the time of sentencing, the Guidelines specifically allowed courts to consider “[p]rior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions.” U.S.S.G. § 4A1.3(a)(2)(B). To determine the magnitude of the departure, the Guidelines instructed courts to use, “as a reference, the criminal history category applicable to defendants whose criminal history or likelihood to recidivate most closely resembles that of the defendant’s.” *Id.* § 4A1.3(a)(4)(A). Section 4A1.3 “intended to provide flexibility in those cases where a point-by-point calculation of the defendant’s criminal history category is not alone sufficient

to reflect his culpability and dangerousness.” *United States v. Harris*, 44 F.3d 1206, 1214 (3d Cir. 1995).

In addition to some juvenile adjudications, Hodges had adult convictions arising from two offenses that occurred eight days apart when he was 17 years old. Both offenses involved armed robbery and sexual assault in which Hodges forced women to perform oral sex on him at gunpoint; one victim was only 16 years old, the other 18. The offenses had the same arrest and sentencing date, so they counted together as one “crime of violence” for the purposes of career offender status under the Guidelines. If there had been an intervening arrest or if Hodges had been sentenced on different days, they would have counted separately, and he would have been a career offender in the current case. He was sentenced to 20 years’ imprisonment for those convictions and served 17 years. He committed the offense before us less than four months after release.

On these facts, the District Court did not abuse its discretion by departing upward from criminal history category III to category VI, the same category given to career offenders. While Hodges did not technically meet the definition of a career offender under the Guidelines, the nature of his previous offenses and his swift recidivism support the District Court’s finding that his criminal history category substantially under-represented the seriousness of his record, meriting an upward departure under U.S.S.G. § 4A1.3. And Hodges’s criminal history most closely resembles that of a career offender. Therefore, the District Court did not abuse its discretion by upwardly departing under the Guidelines.

F. Mitigation Evidence Not Presented to the Probation Office

Finally, Hodges argues the District Court should not have ascribed less weight to some of his mitigation evidence because it was not reported to the Probation Office for preparation of his presentence report. Because this issue is also unpreserved, we review it for plain error. *Olano*, 507 U.S. at 732. Finding none, we affirm.

Along with his sentencing memo, Hodges submitted a 29-page report from a court-appointed mitigation specialist, and, upon the recommendation of the specialist, an 18-page psychological evaluation. The reports detail the extensive abuse Hodges suffered throughout childhood and adolescence. During the sentencing hearing, the District Court questioned why he did not disclose abuse from his mother, which prevented the Probation Office from asking her about that topic during its interview with her. Defense counsel suggested that Hodges might not have recalled these events at the time, but the Court was skeptical and remained concerned about the lost opportunity for corroboration from his mother.

Throughout the exchange, the District Court emphasized that it did not believe Hodges had been untruthful about his upbringing, affirming it would consider this information in mitigation. However, the Court gave it “limited weight” because it was “information . . . provided after the fact when it appears it could have been disclosed to the probation office at the time that the draft presentence report was being prepared,” and therefore was “not able to be verified.” App. 1400.

On appeal, Hodges contends the District Court “imposed a procedural limitation on the mitigating evidence it would meaningfully consider at sentencing.” Opening Br. 69. He points out that a presentence investigation, interview, and report come early in the sentencing process and that the purpose of sentencing materials is to respond to the presentence report. Further, he argues uncontested mitigation is not the type of disputed fact that would be vetted in the presentence report or subject to the objection-and-ruling process under Rule 32. Although acknowledging there might be reason to limit the weight of mitigation evidence on the basis of credibility, Hodges emphasizes that the District Court repeatedly clarified it did not believe he was untruthful about his upbringing.

Hodges has conflated two different forms of credibility: (1) whether he was honest in his recounting of his childhood to the mitigation specialist, and (2) whether the information he conveyed was fully accurate or comprehensive. The District Court only credited him in the first sense—it found no reason to question his own subjective honesty. But it was concerned about the credibility of Hodges’s unpresented mitigation evidence in the second sense—it expressed regret that the Probation Office did not have an opportunity to verify and contextualize Hodges’s account of his childhood, including by interviewing his mother.

As for the legal basis for considering presentment to the Probation Office as a factor at all, “sentencing courts have broad discretion to consider various kinds of information.” *Pepper v. United States*, 562 U.S. 476, 487 (2011) (quoting *United States v. Watts*, 518 U.S. 148, 151 (1997)); *see also* 18 U.S.C. § 3661. Hodges does not advance any reason to carve out an exception to that doctrine here. Therefore, this challenge to his sentence fails as well.

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For the reasons above, we AFFIRM Hodges's convictions and sentence.

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