NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11043
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JANA KANYADAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 4:23-cr-00028-WMR-WEJ-1

Before ROSENBAUM, LUCK, and ABUDU, Circuit Judges.

PER CURIAM:

Jana Kanyadan appeals his convictions and 90-month total sentence for wire fraud, 18 U.S.C. §§ 1343 and 2, and conspiracy to commit wire fraud, 18 U.S.C. §§ 1343 and 1349. On appeal, he

raises six arguments. First, he contends that the district court abused its discretion by denying his request for a hearing on his motion to dismiss the indictment. Next, he maintains that we should set aside his guilty plea because the district court plainly erred by failing to ensure he understood the nature of his offenses and made improper statements at his pretrial hearing. Kanyadan also argues that the district court erred by applying a two-level sophisticated-means enhancement under U.S.S.G. § 2B1.1(b)(10)(C), and a 14-level loss-amount enhancement under U.S.S.G. § 2B1.1(b)(1)(H). Additionally, he claims that the district court erred by ordering him to pay the victim organization's attorneys' fees as part of the restitution order. Finally, Kanyadan asserts that his sentence is substantively unreasonable. After careful review, we affirm.[1]

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

Kanyadan was the Chief Information Officer of flooring manufacturer Mohawk Industries, Inc. ("Mohawk"), where he oversaw the information technology ("IT") department. Around 2019 or 2020, the business began a large-scale IT project, and Mohawk hired several IT firms to supply consultants for it.

In March 2022, Kanyadan and four of his subordinates, including Sivakumar Thiyagasamadram and Madhu Shivalingegowda, devised a plan to replace the IT firms. They created a

[1] Kanyadan and his attorneys have moved for his attorneys to withdraw as counsel on appeal. Because we affirm Kanyadan's convictions, we deny those motions as moot.

company called Meta Technology Platforms, LLC ("Meta Tech") and registered it with the Georgia Secretary of State, listing Thiyagasamadram's wife as its organizer and Thiyagasamadram's property as its principal address. Kanyadan also published a website for Meta Tech and set up a company e-mail account under Thiyagasamadram's wife's name. He then directed Thiyagasamadram and Shivalingegowda to enroll Meta Tech as one of Mohawk's consultant suppliers.

After Meta Tech became an established supplier, Kanyadan instructed Mohawk's IT department to move consultants from other suppliers to Meta Tech and onboard new suppliers through Meta Tech. Meta Tech supplied more consultants to Mohawk each month. To conceal their involvement in Meta Tech, Kanyadan and his subordinates created fake Meta Tech employees with associated contact information, which they used to communicate with Mohawk and other consultants.

Between May and October 2022, Meta Tech submitted over $3,000,000 in invoices to Mohawk, which included charges for work that had not been performed and software that had not been provided. Mohawk paid Meta Tech a total of $1,857,741.40. Meanwhile, Kanyadan was using the money in Meta Tech's bank account to pay for his personal expenses, including various bills and dining and shopping outings.

In the fall of 2022, Mohawk launched an internal investigation that uncovered the fraud. As a result, it stopped issuing payments to Meta Tech and terminated Kanyadan. Shortly thereafter,

Thiyagasamadram resigned and Mohawk terminated Shivalingegowda and the other employees involved in Meta Tech's operations.

In September 2023, a federal grand jury returned an eight-count indictment against Kanyadan and other former Mohawk employees involved in the Meta Tech scheme. The indictment charged the defendants with one count of conspiring to commit wire fraud, in violation of 18 U.S.C. §§ 1343 and 1349 ("Count 1"); and seven counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2 ("Counts 2 through 8"). Each wire fraud count represented an invoice Meta Tech submitted to Mohawk from May 7, 2022 through August 3, 2022.

A. Motion to Dismiss the Indictment

Kanyadan moved to dismiss the indictment for vindictive prosecution. He alleged that in 2022, he discovered that Mohawk's Chief Human Resource Officer ("CHRO") and another high-level employee had engaged in "financial misconduct." Kanyadan reported the misconduct to Mohawk's Chief Executive Officer ("CEO"), who ordered an investigation. Soon after, the CHRO launched an investigation into Kanyadan's role in Meta Tech. The investigation was led by the law firm Alston & Bird. Approximately three months after Kanyadan was fired, he filed a complaint against Mohawk with the Occupational Safety and Health Administration ("OHSA"). The Alston & Bird attorneys submitted a response to the complaint, which included information that was "vir-

tually identical" to information contained in a search warrant affidavit in Kanyadan's criminal case. The Federal Bureau of Investigation ("FBI") agent who prepared the affidavit also had "parroted inaccurate information received from Mohawk and Alston & Bird." Additionally, Kanyadan alleged that Alston & Bird had been heavily involved in the FBI's investigation of Meta Tech.

Against this backdrop, Kanyadan argued that his case was so "weak" it would not normally have been pursued, but Mohawk and its lawyers wanted him prosecuted so they could prevail in the OSHA case. Thus, he maintained that the FBI and United States Attorney's Office ("USAO") were "acting as a stalking horse for Mohawk and its lawyers," demonstrating "vindictive prosecution" that warranted dismissing his charges. Kanyadan further asserted that he had presented sufficient evidence of the close connections between Mohawk, Alston & Bird, the FBI, and the USAO to warrant an evidentiary hearing on his claim of vindictive prosecution.

In response, the government argued that Kanyadan had not shown that the prosecutor harbored vindictive animus or prosecuted Kanyadan solely because of that animus. It asserted that the prosecutor had no interest in the outcome of the OSHA proceeding and Kanyadan failed to establish that Mohawk had "prevailed upon" the prosecutor to prosecute Kanyadan. Furthermore, the government stated it had not been improper for the FBI agent to rely on information from Mohawk in preparing the search warrant affidavit. Finally, it argued that Kanyadan was not entitled to an

evidentiary hearing because he had not established that there was a reasonable doubt about the constitutionality of his prosecution.

In reply, Kanyadan clarified that his motion to dismiss was not based on the prosecutor's actual animus; instead, it was premised upon a legal theory whereby Mohawk had "prevailed upon" the prosecutor to indict Kanyadan. Thus, he maintained, the government was Mohawk's "stalking horse."

The magistrate judge issued a report and recommendation ("R&R") that Kanyadan's motion to dismiss the indictment be denied. The magistrate judge found that Kanyadan failed to establish that Mohawk had prevailed upon the prosecutor and had presented insufficient evidence to warrant an evidentiary hearing. The magistrate judge also noted that it would have been "surprising if the USAO had declined to prosecute" Kanyadan's case given the magnitude of the fraud it involved, and stated that the FBI agent had properly relied on information from Mohawk in preparing the search warrant affidavit. Kanyadan objected to the R&R, arguing that the magistrate judge had erred by rejecting his "stalking horse theory of vindictiveness," as Mohawk's alleged animus was apparent.

The government then filed a motion in limine, in which it sought to exclude evidence and arguments related to its decision not to charge other co-conspirators involved in the case. It also sought to exclude any arguments Kanyadan had raised in his motion to dismiss the indictment for vindictive prosecution.

At Kanyadan's pretrial hearing, the district court denied Kanyadan's motion to dismiss the indictment on many "of the same grounds" the magistrate judge set forth in the R&R. The court then discussed the government's motion in limine. With respect to the evidence of the government's charging decisions and Kanyadan's vindictive prosecution arguments, the court stated that its impression of Kanyadan's theory was that Mohawk only told the government about Kanyadan's fraud after he filed the OSHA complaint, making the prosecutor Mohawk's "[s]talking horse." The court then made the following statement about that theory:

> Yeah. It's going to be interesting to see if the jury believes that that legitimate -- I rather doubt they're not going to. That sounds like he got lawyered up and, you know, the best defenses and offense. I don't think it's probably going to stand the test of scrutiny, but be it as it may.

The court ultimately granted the government's motion as to the evidence of the government's charging decisions and Kanyadan's vindictive prosecution arguments but clarified that Kanyadan would be able to challenge Mohawk's credibility and veracity through cross-examination.

B. Change-of-Plea Hearing

Three days before his trial was scheduled to begin, Kanyadan pled guilty to all counts without a plea agreement. At the change-of-plea hearing, Kanyadan acknowledged that he had reviewed and signed a document certifying that he was pleading

guilty. The district court placed Kanyadan under oath, explained what a change-of-plea hearing involved, and told Kanyadan to inform the court if he did not understand any of the topics covered or questions asked during the proceeding. Kanyadan indicated that he would and confirmed that he had not consumed any drugs, alcohol, or medicine in the previous 24 hours. He testified that he had received a bachelor's degree in India, and his attorney noted that he had also earned a master's degree in the United States. In response to the district court's questioning, Kanyadan stated that he understood that he had the right to plead not guilty and proceed to trial. The district court then addressed Kanyadan's trial-related rights, and Kanyadan acknowledged he was waiving them by pleading guilty. Kanyadan also confirmed that he had not been threatened or coerced into pleading guilty. Additionally, he stated that he had sufficiently considered his options and discussed his case with his attorneys, with whom he was satisfied. The government explained the charges, and Kanyadan stated that he understood he was pleading guilty to one count of conspiracy to commit wire fraud and seven counts of wire fraud.

Next, the government described the factual basis of the plea as follows. In March of 2022, Kanyadan and four of his subordinates created Meta Tech as part of "a scheme to steal money from Mohawk." They concealed their involvement in the company by inventing fake Meta Tech employees, through whom they would communicate with Mohawk and other consultants. Kanyadan also used his position at Mohawk to direct business to Meta Tech. Over the course of several months, Meta Tech submitted more than

$3,000,000 in invoices to Mohawk, which included charges for work that was not performed and software that had not been provided. Kanyadan and his co-conspirators maintained a spreadsheet to track the discrepancies between the hours the consultants worked, and the inflated hours Meta Tech billed to Mohawk. Kanyadan signed invoices that included costs Meta Tech had not incurred. Before it discovered the fraud, Mohawk paid Meta Tech $1,857,741.40. Throughout the conspiracy, Kanyadan used the money in Meta Tech's bank account to pay for his personal expenses. In the fall of 2022, Mohawk discovered the scheme and fired Kanyadan and his co-conspirators.

Following this presentation of the facts, Kanyadan's counsel stated that he had "no material disagreement" with the government's recitation. Kanyadan also agreed with the government's description of his conduct. He admitted that he was guilty of every count in the indictment and the court found that there was a sufficient factual basis for Kanyadan to enter his guilty plea. The government and court also addressed the penalties Kanyadan could face, which he acknowledged he understood. The court then found that Kanyadan understood the offenses with which he was charged, the consequences of his guilty plea, the evidence against him, and the possible penalties he faced. It further determined that his plea was free from coercion or threats. Thus, the court accepted his plea and adjudged him guilty of all the counts in the indictment.

C. Presentence Investigation

Prior to sentencing, a probation officer prepared Kanyadan's presentence investigation report ("PSI"), which included a description of the government's calculations of the loss amount from the fraud scheme. Meta Tech billed Mohawk a total of $3,016,011.40, of which Mohawk paid $1,857,741.40.[2] Of that $1,857,741.40, Meta Tech paid its consultants $1,037,164 and pocketed the remaining $820,577.40. Thus, the government alleged that $820,577.40 was the actual loss amount Mohawk sustained. With respect to the intended loss amount for the invoices Mohawk had not paid, the government multiplied the value of those invoices—$1,158,270—by 44.17%, the percentage of the paid invoices Meta Tech had pocketed. Therefore, the total loss amount was the sum of the actual and intended loss amounts, or $1,332,193.38. The PSI indicated that Mohawk's losses for the purposes of restitution totaled $1,245,231.26, which included an actual loss amount of $856,177; $359,609.41 in expenses related to responding to the government's investigation; and $29,444.85 for the preparation of a victim impact statement and other legal documents.

Additionally, the PSI calculated a base offense level of seven for Kanyadan but applied a 14-level enhancement, pursuant to Section 2B1.1(b)(1)(H), because the loss amount exceeded $550,000. It also added a two-level enhancement, under Section 2B1.1(b)(10)(C), because the offense involved sophisticated means.

[2] Mohawk did not pay the remaining amount because it discovered the fraud.

The PSI then added a four-level enhancement for Kanyadan's leadership role, and a two-level enhancement because he had abused a position of trust. The PSI declined to apply a reduction for acceptance of responsibility, resulting in a total offense level of 29. It also assigned Kanyadan a criminal history category of I because he had no criminal history. Based on an offense level of 29 and a criminal history category of I, Kanyadan's guideline range was 87 to 108 months' imprisonment.

Kanyadan objected to various aspects of the PSI, including several of its factual statements regarding his offense conduct. He also objected to the PSI's calculation of the loss amount, asserting that it was incorrect to use the difference between the amount Meta Tech paid its consultants and the amount Meta Tech billed Mohawk because Mohawk would not have been able to obtain the "wholesale price" for the IT services anywhere. Instead, Kanyadan maintained that the loss amount should be calculated by multiplying the hourly rate Meta Tech charged by the number of hours billed for work that was not done, which would yield a total loss amount of $211,206. Additionally, he objected to the 14-level enhancement on the basis that the loss amount was less than $250,000 when calculated correctly. Furthermore, Kanyadan objected to the two-level sophisticated-means enhancement, asserting that the offense "was a simple overbilling scheme." Finally, he objected to the exclusion of a reduction for acceptance of responsibility.

The government filed a sentencing memorandum, in which it argued that Kanyadan should be required to pay Mohawk

$985,166.66 in restitution for losses from the fraud scheme and expenses related to the government's investigation and prosecution of Kanyadan, including attorneys' fees, in accordance with the Mandatory Victims Restitution Act ("MVRA"). Kanyadan also filed a sentencing memorandum, reiterating that the government's loss amount calculation was incorrect and thus, he should not receive the 14-level enhancement recommended by the PSI. Moreover, he maintained that Mohawk's claimed expenses for restitution were excessive.

D. Sentencing

At sentencing, the district court heard the parties' arguments on the calculation of the loss amount. The government acknowledged that the money Meta Tech paid to its consultants for the work they performed should not be included in the loss amount because it represented real value provided to Mohawk. However, the government asserted that the money Meta Tech retained was part of the loss amount because the costs Meta Tech incurred to run the fraud scheme had not benefited Mohawk. Kanyadan maintained that the fair market value of the services Meta Tech provided should be deducted from the loss amount because the business decision to use outside contractors for the IT project was legitimate and he and his co-conspirators had performed duties outside of their normal responsibilities. The district court ultimately agreed with the government, overruled Kanyadan's objection, and adopted the 14-level enhancement. It stated that, while Kanyadan's argument was not meritless, he was nevertheless stealing

from Mohawk because Mohawk could have performed the work Meta Tech did.

The court also overruled Kanyadan's objection to the two-level sophisticated-means enhancement. It found that Kanyadan's fraud scheme was not simple, as it required Kanyadan to create a company, generate and submit invoices to Mohawk while evading detection, and invent e-mail addresses and fictitious people. However, it granted Kanyadan a two-level reduction for acceptance of responsibility, which lowered his total offense level to 27 and his guideline range to 70 to 87 months' imprisonment.

The district court then heard arguments on Kanyadan's sentence. Kanyadan requested a substantial downward variance, emphasizing that his personal history and characteristics warranted a lower sentence. The government reasserted its arguments regarding restitution and highlighted the serious and deceitful nature of Kanyadan's conduct. Kanyadan also allocuted. He stated that he regretted letting Mohawk's CEO down and explained that he originally started Meta Tech to complete the IT project on time, but his plan went off track when Meta Tech began overbilling Mohawk.

The district court determined that a sentence exceeding the guideline range was appropriate, considering the 18 U.S.C. § 3553(a) factors. It rejected Kanyadan's contention that his reasons for starting Meta Tech were altruistic and stated that Kanyadan had not expressed remorse or taken accountability. The court also noted that Kanyadan's personal history and characteristics

weighed in his favor, but the nature of his offense did not. Thus, it sentenced him to 90 months' imprisonment, followed by a three-year term of supervised release. The court also ordered him to pay restitution in the amount of $985,166.66. It stated that it had considered "all of the things that ha[d] occurred" at the hearing and explained that the above-guideline sentence was justified by Kanyadan's culpability and lack of remorse. The court later entered a separate judgment to this effect. Kanyadan's appeal followed.

II. STANDARDS OF REVIEW

Generally, we review a district court's denial of an evidentiary hearing for an abuse of discretion. *United States v. Barsoum*, 763 F.3d 1321, 1328 (11th Cir. 2014). We also review a district court's decision not to dismiss an indictment for vindictive prosecution for an abuse of discretion. *See United States v. Kendrick*, 682 F.3d 974, 981 (11th Cir. 2012). "A district court abuses its discretion if, in making the decision at issue, it applies the incorrect legal standard or makes findings of fact that are clearly erroneous." *United States v. Jordan*, 316 F.3d 1215, 1249 (11th Cir. 2003).

We review challenges to restitution orders raised for the first time on appeal only for plain error. *United States v. Utsick*, 45 F.4th 1325, 1332 (11th Cir. 2022). "To establish plain error, a defendant must show there is (1) error, (2) that is plain, and (3) that affects substantial rights." *United States v. Moriarty*, 429 F.3d 1012, 1019 (11th Cir. 2005). "When neither the Supreme Court nor this Court has resolved an issue, and other circuits are split on it, there can be no plain error in regard to that issue." *Id.; see also United States v.*

Frank, 599 F.3d 1221, 1239 (11th Cir. 2010) ("[I]f the explicit language of the statute or rule does not specifically resolve the issue, and there is no precedent from this Court or the Supreme Court directly resolving it, there is no plain error.").

We also review unobjected-to violations of Federal Rule of Criminal Procedure 11 for plain error. *Moriarty*, 429 F.3d at 1019. Rule 11(b) provides the procedures district courts must follow when accepting guilty pleas to ensure they are made knowingly and voluntarily. *United States v. Presendieu*, 880 F.3d 1228, 1238 (11th Cir. 2018). "These procedures are designed to address the three 'core objectives' necessary for a knowing and voluntary guilty plea: (1) that the defendant enters his plea free from coercion, (2) that he understands the nature of the charges, and (3) that he understands the consequences of his plea." *Id.* A Rule 11 violation constitutes plain error only when the district court's plea colloquy "involv[ed] not only violations of explicit requirements of Rule 11, but also violations that resulted in a total or almost total failure to address a Rule 11 core concern." *Id.* at 1239-40 (internal quotation marks omitted).

We review the procedural reasonableness of a sentence under an abuse of discretion standard. *United States v. Caldwell*, 81 F.4th 1160, 1175 (11th Cir. 2023). "A sentence is procedurally unreasonable if the district court miscalculated the relevant guideline range for a defendant." *Id.* at 1184. We review the district court's application of the United States Sentencing Guidelines de novo, *United States v. Dupree*, 57 F.4th 1269, 1272 (11th Cir. 2023) (*en banc*),

and its "findings of fact related to the imposition of sentencing enhancements, including a finding that the defendant used sophisticated means, for clear error," *United States v. Clarke*, 562 F.3d 1158, 1165 (11th Cir. 2009). We also review a district court's determination of the loss amount for clear error. *United States v. Cavallo*, 790 F.3d 1202, 1232 (11th Cir. 2015). Under the clear error standard, we "will not disturb a district court's findings unless we are left with a definite and firm conviction that a mistake has been committed." *Clarke*, 562 F.3d at 1165 (internal quotation marks omitted).

Finally, we review the substantive reasonableness of a sentence under a deferential abuse-of-discretion standard. *United States v. Oudomsine*, 57 F.4th 1262, 1266 (11th Cir. 2023). In accordance with this standard, we will vacate a sentence only if "we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the [18 U.S.C.] § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (*en banc*) (internal quotation marks omitted).

III. DISCUSSION

As we noted at the outset, Kanyadan makes six different arguments on appeal. We address, and reject, each one in turn.

A. The district court did not abuse its discretion by denying Kanyadan a hearing on his motion to dismiss.

On appeal, Kanyadan argues that the district court abused its discretion by refusing to grant him a hearing on his motion to dismiss the indictment for vindictive prosecution. He maintains that Mohawk sought his criminal prosecution because he filed an OSHA complaint and the government agreed to prosecute him for that reason alone. Kanyadan contends that under this "stalking horse" theory, which he urges us to adopt, his indictment should have been dismissed. He also asserts that he was entitled to a hearing on his motion because he established reasonable doubt as to the government's motivation for prosecuting him.[3]

In response, the government maintains that we should not adopt the "stalking horse" theory of vindictive prosecution, and states that Kanyadan has not alleged that the prosecutor harbored animus toward him. It further submits that, even if we adopted the "stalking horse" theory, the district court did not err by finding that Kanyadan failed to establish Mohawk's vindictiveness, as he did not

[3] Kanyadan also asserts that he did not waive the issue of his entitlement to an evidentiary hearing on his motion to dismiss the indictment by pleading guilty. We decline to address this issue because Kanyadan's claim fails on the merits.

present objective evidence that Mohawk "prevailed upon" the government to prosecute him or that Mohawk's animus was the only reason for Kanyadan's prosecution.

Generally, courts lack authority to interfere with a decision to prosecute if the prosecutor has "probable cause to believe the accused has committed a crime." *United States v. Barner*, 441 F.3d 1310, 1315 (11th Cir. 2006). However, under the doctrine of vindictive prosecution, a prosecution initiated for the purpose of retaliating against a defendant for exercising his statutory or constitutional rights is prohibited by the Due Process Clause. *United States v. Spence*, 719 F.2d 358, 361 (11th Cir. 1983); *see also United States v. Goodwin*, 457 U.S. 368, 372 (1982) (providing that "while an individual certainly may be penalized for violating the law, he just as certainly may not be punished for exercising a protected statutory or constitutional right"). Where a presumption of vindictiveness does not apply, such as in the pre-trial context, a defendant must establish actual vindictiveness. *See Barner*, 441 F.3d at 1316–17.

Here, the district court did not abuse its discretion by refusing to hold an evidentiary hearing on Kanyadan's motion to dismiss the indictment. Kanyadan acknowledges that we have not adopted a theory of vindictive prosecution based on animus harbored by a private third party. However, his motion to dismiss the indictment was entirely premised upon Mohawk's alleged animus; he did not argue that the prosecutor himself charged Kanyadan in retaliation for exercising his statutory or constitutional rights or otherwise engaged in vindictive prosecution. Thus, Kanyadan was not entitled

to relief on his motion to dismiss the indictment because it was based on a legal theory that has not been accepted in this Circuit. *Id.* at 1315. As a result, the district court was not required to afford Kanyadan an evidentiary hearing on that motion, and it did not abuse its discretion by denying his request for one. *Barsoum*, 763 F.3d at 1328.

B. Kanyadan's guilty plea should not be set aside because the district court complied with Rule 11.

Kanyadan also asks us to set aside his guilty plea because the district court did not comply with Rule 11 for several reasons. However, Kanyadan did not raise any such objections at the change-of-plea hearing. Thus, we review his argument only for plain error. *Moriarty*, 429 F.3d at 1019.

First, Kanyadan asserts that the district court violated Rule 11(b)(1)(G) by allowing the government to inform him of the elements of his offenses and by failing to ask him if he understood the nature of his charges. Rule 11(b)(1)(G) requires that the court "inform the defendant of, and determine that the defendant understands," "the nature of each charge to which the defendant is pleading." Fed. R. Crim P. 11(b)(1)(G); *see Presendieu*, 880 F.3d at 1238. However, there is no "mechanical rule for determining whether the district court adequately informed the defendant of the nature of the charges," and a district court is not required to read a defendant the elements of an offense. *Presendieu*, 880 F.3d at 1238 (internal quotation marks omitted). In evaluating whether a district court complied with Rule 11(b)(1)(G), the relevant inquiry is

"whether [the defendant] understood what he was admitting and that what he was admitting constituted the crime charged." *Id.* at 1240 (internal quotation marks omitted).

Here, Kanyadan has not established a Rule 11(b)(1)(G) violation. The record demonstrates that Kanyadan understood the nature of the charges to which he was pleading guilty. At his change-of-plea hearing, Kanyadan agreed to inform the court if he did not understand any of the topics discussed or questions posed. He confirmed that he had discussed his case with his attorneys and articulated that he was pleading guilty to one count of conspiracy to commit wire fraud and seven counts of wire fraud. Additionally, Kanyadan expressly agreed with the facts the government recited and admitted that he was guilty of every charge. Kanyadan also had two higher education degrees and was the CIO of a large company, further supporting the conclusion he understood the nature of his charges. *See id.* at 1238 (explaining that the adequacy of a plea colloquy depends in part on "the defendant's intelligence and sophistication"). Contrary to Kanyadan's implications, the court was not required to read the elements of the charges. *Id.* It accepted his guilty plea after confirming that Kanyadan had made it voluntarily and with knowledge of the charged offenses. That finding was not plainly erroneous. *Moriarty*, 429 F.3d at 1019.

Second, Kanyadan asserts that the district court made improper and coercive statements that implied that a jury would not believe his defense, which contributed to his decision to plead

guilty.[4] Rule 11(c)(1) prohibits the district court from participating in discussions regarding a plea agreement. Fed. R. Crim. P. 11(c)(1); *United States v. Harrell*, 751 F.3d 1235, 1239 (11th Cir. 2014). In determining whether a Rule 11(c)(1) error affected a defendant's substantial rights in the context of plain-error review, we evaluate "whether it was reasonably probable that, but for the district court's exhortations, the defendant would have exercised his right to go to trial." *Harrell*, 751 F.3d at 1236–37 (internal quotation marks omitted, alterations adopted). The specific facts and circumstances of a case, such as whether the defendant later testified under oath that he was not coerced into pleading guilty, matter in analyzing whether a district court's comment affected a defendant's decision to plead guilty. *United States v. Castro*, 736 F.3d 1308, 1314 (11th Cir. 2013).

Here, Kanyadan has not established that the district court plainly erred by commenting on Kanyadan's theory that the government prosecuted him at Mohawk's urging after he filed his OSHA complaint. Although the district court expressed doubt as to whether the jury would believe this theory, it did so in the context of addressing the government's motion in limine, not during any plea negotiations. As such, the comment did not plainly violate Rule 11(c)(1). Even if it had, however, Kanyadan has not shown

[4] Kanyadan also mentions two additional comments the district court made, but the court made those comments after Kanyadan pled guilty and the district court accepted his plea. Thus, they could not have contributed to his decision to plead guilty.

that he would not have pled guilty had the district court not made the comment. *See Harrell*, 751 F.3d at 1237. Kanyadan decided to plead guilty after the court informed him of his right to proceed to trial. Moreover, Kanyadan expressed that he was pleading guilty because he was, in fact, guilty, and that no one had coerced or threatened him. *See Castro*, 736 F.3d at 1314. Thus, we decline to set aside Kanyadan's guilty plea.

C. The district court did not clearly err in applying the sophisticated-means enhancement.

Next, Kanyadan argues that the district court clearly erred in applying the two-level sophisticated-means enhancement under Section 2B1.1(b)(10)(C) because his scheme was simple, as it did not involve any aspects of genuine sophistication, like offshore bank accounts or complex financial transactions. He maintains that inventing fake e-mail addresses and fictitious employees was "the essence of the fraud," not "an above-and-beyond means of concealment."

Section 2B1.1(b)(10)(C) provides for a two-level enhancement for fraud offenses involving "sophisticated means" where "the defendant intentionally engaged in or caused the conduct constituting sophisticated means." U.S.S.G. § 2B1.1(b)(10)(C). To evaluate whether an offense involved sophisticated means, courts examine the totality of the defendant's conduct. *United States v. Feaster*, 798 F.3d 1374, 1380 (11th Cir. 2015). Additionally, courts

will consider whether a defendant used his position at an organization to perpetuate the fraud and employed methods to either affirmatively conceal the scheme or evade detection. *Id.* at 1381–82.

Here, the district court did not clearly err in applying the sophisticated-means enhancement. Although Kanyadan asserts that his scheme was simple, it involved various complexities, including creating and incorporating a separate business entity, publishing a website, and setting up e-mail accounts under fictitious names. Additionally, Kanyadan used his position as the CIO of Mohawk to instruct his subordinates to establish Meta Tech as one of Mohawk's suppliers and direct business to Meta Tech. *Id.* Furthermore, Kanyadan worked to affirmatively conceal the scheme by inventing fake employees, through whom he would communicate with Mohawk and other consultants. *Id.* In sum, the nature of the scheme and Kanyadan's role in it support the district court's application of the two-level sophisticated-means enhancement under Section 2B1.1(b)(10)(C), and the district court did not clearly err in applying it. *Clarke*, 562 F.3d at 1165.

D. The district court did not clearly err in determining the loss amount and applying the 14-level loss-amount enhancement.

Kanyadan also challenges the district court's calculation of the loss amount and resulting enhancement. He argues that the district court underestimated the fair market value of the services Meta Tech provided and should have deducted the amount that Mohawk would have had to pay another company for Meta Tech's

services. Thus, he concludes, the correct loss amount equals the value of the services Meta Tech billed Mohawk for but did not actually perform. The government responds that Kanyadan's operation of Meta Tech was imbued with fraud, such that he was not entitled to credit for any alleged value Meta Tech provided Mohawk while carrying out the fraudulent scheme. Therefore, it maintains that the district court did not clearly err by only crediting Kanyadan for the cost of the services Meta Tech paid to its legitimate consultants.

Loss amount is the greater of the actual or intended loss, and actual loss can include reasonably foreseeable loss caused by a defendant and any of his co-conspirators. *United States v. Campbell*, 765 F.3d 1291, 1302 (11th Cir. 2014); *see also United States v. Horn*, 129 F.4th 1275, 1298 (11th Cir. 2025). Sentencing courts are not required to precisely determine loss amount, but instead, "need only make a reasonable estimate of the loss, given the available information." *Cavallo*, 790 F.3d at 1232 (internal quotation marks omitted). In the context of fraudulent overbilling, the victim's financial losses equal "the difference between the amount billed and the value of the legitimate services rendered." *Campbell*, 765 F.3d at 1303. Where a defendant's offense conduct was "permeated with fraud," however, a court may use the total funds transferred to the fraudulent enterprise "as the starting point" for calculating the loss amount. *Id.* at 1305. It may not treat that value as the total loss amount, though, because "value may be rendered even amid fraudulent conduct." *Id.* (internal quotation marks omitted).

Thus, it must credit the defendant for the fair value of any legitimate services rendered to the victim. *Id.* Nevertheless, a defendant "may not receive credit for value that is provided to his victims for the sole purpose of enabling him to conceal or perpetuate his scheme, nor may he deduct the costs he incurred in running a fraudulent scheme." *Id.* at 1303 (internal citations omitted); *see also id.* at 1305 (providing that a defendant is not entitled to deduct normal operating expenses of his fraudulent enterprise merely because a legitimate business would incur such expenses). "The relevant inquiry is whether any legitimate value was rendered to the" victim organization. *Id.* at 1305.

We agree with the government that the district court did not clearly err by accepting its calculation of the loss amount. Kanyadan's conduct in operating Meta Tech was "permeated with fraud," which is evidenced by the facts that he conspired with his subordinates to create Meta Tech, used his position as Mohawk's CIO to direct business to Meta Tech, and invented fictitious employees to communicate with Mohawk and other consultants. *Id.* Thus, the district court was permitted to use the amount Mohawk transferred to Meta Tech as the starting point for calculating the loss amount. *See id.* The court was then required to deduct the fair market value of the services Meta Tech rendered to Mohawk, which it did by crediting the payments Meta Tech made to its consultants for the actual work they performed. *Id.* With respect to intended loss, it permissibly multiplied the percentage of money Meta Tech retained from the invoices paid by the total of the unpaid invoices. *Id.* at 1301. Thus, the district court's loss amount

calculation was "a reasonable estimate of the loss" incurred by Mohawk. *Cavallo*, 790 F.3d at 1232.

Moreover, the district court properly declined to deduct the profits Kanyadan claims Meta Tech was entitled to for supplying consultants. Mohawk did not actually need Meta Tech's services because all of Meta Tech's employees also were employed by Mohawk and could have done the same work there. Additionally, Meta Tech's expenses and profits were illegitimate because they were incurred and earned as part of a fraudulent scheme. *See Campbell*, 765 F.3d at 1303, 1305. Thus, the district court's refusal to deduct Meta Tech's purported profits was not clearly erroneous. *Cavallo*, 790 F.3d at 1232. Furthermore, because the district court did not err in calculating the loss amount, its application of the 14-level enhancement under Section 2B1.1(b)(1)(H) was also appropriate. *See* U.S.S.G. § 2B1.1(b)(1)(H).

E. The district court did not err in calculating the restitution amount.

Kanyadan next argues that the district court erred in calculating the amount of restitution he was ordered to pay Mohawk under the MVRA. First, he contends that the district court clearly erred in calculating the actual loss amount included in the restitution order for the same reasons he asserts the application of the 14-offense-level enhancement was erroneous. We reject this argument for the reasons explained above.

Kanyadan also maintains that the district court erred by ordering him to pay restitution to cover Mohawk's attorneys' fees.

He asserts that the fee award was unreasonably high and unnecessary, and the district court did not engage in any fact-finding to determine that value. Additionally, he argues that, because the MVRA does not permit victims to recover attorneys' fees, the district court plainly erred by imposing them in his case.

The MVRA requires district courts "to grant restitution to all victims once a defendant is convicted of 'any offense . . . in which an identifiable victim or victims has suffered a . . . pecuniary loss.'" *United States v. Goldman*, 953 F.3d 1213, 1223 (11th Cir. 2020) (quoting 18 U.S.C. § 3663A(c)(1)(B)). Under the MVRA, a restitution order must direct the defendant to "reimburse the victim for lost income and necessary child care, transportation, and *other expenses* incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." 18 U.S.C. § 3663A(b)(4) (emphasis added).

In *Lagos v. United States*, the Supreme Court held that the MVRA's restitution provision is not broad enough to encompass expenses incurred during private investigations or civil proceedings. 584 U.S. 577, 585 (2018). It reasoned that Section 3663A(b)(4) should be interpreted in a limited manner to encompass expenses like those specified in the enumerated categories: "lost income, child care, and transportation." *Id.* at 582. Later, the Third Circuit answered the question of whether Section 3663A(b)(4) allows a district court to reimburse a victim for attorneys' fees incurred in cooperating with the government's criminal investigation. *United States v. Abrams*, 165 F.4th 784, 792 (3d Cir. 2026). Relying on the

Supreme Court's reasoning in *Lagos* and canons of statutory construction, it answered the question in the negative, holding that Section 3663A(b)(4) does not encompass attorneys' fees. *Id.* at 812–16. It noted that the expenses enumerated in the statutory provision were modest and incidental, while legal fees could total substantial sums. *Id.* at 814. Thus, the Third Circuit concluded that it would be "unusual . . . for Congress to smuggle so substantial a category of liability into a residual phrase appended to a subsection that is already ancillary to § 3663A(b)'s primary, offense-specific restitution provisions." *Id.*

Here, Kanyadan failed to raise this issue below, so we review only for plain error. *See Utsick*, 45 F.4th at 1332. Kanyadan has not demonstrated that the district court committed reversible plain error with respect to its restitution award. The Supreme Court's opinion in *Lagos* did not clearly resolve the issue of whether the MVRA allows a victim to recover attorneys' fees related to participation in the government's criminal investigation. *See Lagos*, 584 U.S. at 585. While the Third Circuit has held that Section 3663A(b)(4) does not permit such recovery, its decision is not binding on us, and our precedent does not otherwise resolve this issue. *See Abrams*, 165 F.4th at 812–816; *Frank*, 599 F.3d at 1239. Moreover, the "the explicit language of the statute or rule does not specifically resolve the issue." *See Frank*, 599 F.3d at 1239. Thus, in the absence of binding precedent or explicit statutory language, Kanyadan cannot show plain error as to the district court's award of Mohawk's attorney's fees as part of its restitution order. *Moriarty*, 429

F.3d at 1019. Similarly, Kanyadan has not presented binding precedent supporting his position that the fees he challenges are unreasonable. *Id*.

F. Kanyadan has not shown that his sentence is substantively unreasonable.

Finally, Kanyadan asserts that the district court abused its discretion by imposing a substantively unreasonable 90-month sentence. First, he argues that the district court weighed his personal characteristics and the nature of his offense too heavily and failed to afford sufficient weight to his lack of criminal history and the fact that he did not need to be deterred from committing future offenses. Kanyadan also asserts that Thiyagasamadram's receipt of a 10-month sentence created an unwarranted sentencing disparity, which shows his sentence is substantively unreasonable.

Here, Kanyadan has not established that his sentence is substantively unreasonable or that the district court erred in imposing it. The court stated that it explicitly considered the Section 3553(a) factors and the parties' arguments and acknowledged that Kanyadan's personal history and characteristics weighed in his favor. However, it placed greater weight on other sentencing factors, such as the nature of Kanyadan's offense and his lack of remorse, which it had the discretion to do. *See United States v. Olson*, 127 F.4th 1266, 1276 (11th Cir. 2025) (providing that district courts are not required to weigh all the Section 3353(a) factors equally and have the discretion to afford greater weight to certain factors). Fur-

thermore, Kanyadan's 90-month sentence was well below the statutory maximum of 20 years' imprisonment, which is another indicator of its reasonableness. *United States v. Dougherty*, 754 F.3d 1353, 1362 (11th Cir. 2014) ("A sentence imposed well below the statutory maximum penalty is an indicator of a reasonable sentence."); 18 U.S.C. § 1343 (providing that the statutory maximum term of imprisonment for a violation of 18 U.S.C. § 1343 is 20 years).

Additionally, Kanyadan's sentence did not result in an unwarranted sentencing disparity. The district court did not need to consider the disparity between the sentences imposed on Thiyagasamadram and Kanyadan because they were not similarly situated. *See United States v. Mullings*, 166 F.4th 939, 957 (11th Cir. 2026) (providing that a court need not consider sentencing disparities between the defendant and others who are not similarly situated); *see also United States v. Sotis*, 89 F.4th 862, 880 (11th Cir. 2023). Kanyadan led the fraud scheme and abused his position as Mohawk's CIO to direct business to Meta Tech. Thiyagasamadram, on the other hand, was Kanyadan's subordinate at Mohawk, and acted at Kanyadan's direction. Thus, the fact that Kanyadan's prison sentence was higher than that of Thiyagasamadram does not show that Kanyadan's was substantively unreasonable.

In sum, Kanyadan's sentence was not "outside the range of reasonable sentences dictated by the facts of the case," and was therefore substantively reasonable. *Irey*, 612 F.3d at 1190.

IV. CONCLUSION

For the reasons we have explained, we reject each one of Kanyadan's arguments on appeal and affirm.

AFFIRMED.