UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4125

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIE LAMONT HICKS, a/k/a Will Woodward, a/k/a CW,

Defendant - Appellant.

No. 24-4127

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARY ANN MENDOZA, a/k/a Mary Ann Manuel, a/k/a Trinity, a/k/a M3, a/k/a Emily James,

Defendant - Appellant.

Appeals from the United States District Court for the District of Maryland, at Greenbelt. Theodore D. Chuang, District Judge. (8:21-cr-00500-TDC-1; 8:21-cr-00500-TDC-2)

Argued: March 20, 2026 Decided: August 14, 2025

Before NIEMEYER, THACKER, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: Meghan Skelton, SKELTON LAW LLC, Cabin John, Maryland; Charles Burnham, BURNHAM & GOROKHOV PLLC, Washington, D.C., for Appellant. Mary Jessica Kirsch Munoz, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee. **ON BRIEF:** Kelly O. Hayes, United States Attorney, David C. Bornstein, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following a jury trial, Willie Lamont Hicks and Mary Ann Mendoza (collectively, "Appellants") were convicted of wire fraud and conspiracy to commit wire fraud. They now raise various challenges to the proceedings below.

We see no error and therefore affirm.

I.

A.

Background

This case arises from a fraudulent scheme carried out by Appellants. Although they were never legally married, the two held themselves out as husband and wife, and together put on workshops in which they purportedly taught people the keys to financial success. Appellants' definition of "success" varied with the circumstances of those paying for Appellants' services. Sometimes, success meant getting out of debt and the students improving their financial wellbeing. Other times it meant estate planning. Hicks presented the lectures during the workshops, while Mendoza handled the financial aspects of the business, although at times she also interacted with the students.[1]

The problem was that neither was qualified to dispense financial advice and the lectures were a sham. For instance, Hicks advised students that they could gain an advantage with the IRS by using a certain color ink on mortgage or tax forms. He also

[1] For example, while Hicks was in charge of the male students, Mendoza had control over the female students, who Appellants referred to as "the Emilys," and routinely assigned them errands to run on her behalf.

advised those who were current on their mortgages to stop paying their mortgage. Beyond that, Hicks assisted students in filing fake documents, such as promissory notes and money orders, which purported to show that the students' debt was erased when, in fact, it was not.

Although the advice was bad, it came at a price. Appellants accepted monetary payments and payments in kind from their students. For example, students would sometimes buy items for Appellants, such as a MacBook. Other times students would allow Appellants to charge expenses to their credit cards. As a result, Appellants lived a high quality life at the expense of their students. Their students, in contrast, did not live the good life financially as a result of following Appellants' advice. Some entered bankruptcy. Others lost their homes.

B.

Pre-Trial

Ultimately, a grand jury sitting in the District of Maryland indicted Appellants on December 22, 2021, on charges of wire fraud and conspiracy to commit wire and mail fraud. The two were later indicted via a superseding indictment on August 17, 2023. The superseding indictment levied five counts against Appellants. Count I charged Appellants with conspiracy to commit wire and mail fraud. Counts II through V charged them with substantive wire fraud.

Prior to trial, Hicks decided to waive his right to counsel and proceed pro se. An initial *Faretta*[2] hearing was held before a magistrate judge. The magistrate judge found that Hicks had knowingly and intelligently waived his right to counsel. However, the Government later asked the district court to conduct its own *Faretta* hearing to ensure that Hicks' waiver of counsel was valid. The district court then also held a *Faretta* hearing. Because Hicks had already waived his right to counsel, he appeared pro se at the second *Faretta* hearing, although he had standby counsel with him. The court engaged in a lengthy colloquy with Hicks, the transcript of which spans roughly 50 pages.

The district court's colloquy with Hicks delved into a range of topics. The court asked Hicks about his mental health history, as well as whether he had any history of alcohol or substance abuse.[3] The court also asked Hicks about this legal training and whether he had ever personally tried a case. The court assured itself that Hicks understood the charges against him and the potential penalties he faced if convicted. The court also informed Hicks that if he proceeded pro se, he would be held to the same standard as an attorney, would be required to follow the Federal Rules of Evidence, and must abide by courtroom protocol. The court also cautioned Hicks that he would be better served by accepting counsel, and that he would do himself a disservice representing himself at trial.

[2] Pursuant to *Faretta v. California*, 422 U.S. 806 (1975), trial courts must ensure that a defendant intends to waive their right to counsel and understands the consequences of doing so.

[3] Hicks told the court that he had no such issues or any mental health concerns.

See J.A. 3070[4] ("So, given all that, and given the fact you haven't done one of these trials before . . . in my view, a trained lawyer would provide you a better chance and would defend you better than you doing it yourself.").

Hicks stood steadfast in his desire to proceed pro se. He offered three reasons for wanting to do so. First, Hicks complained that none of his lawyers (he was on his third at the time) had gone through all of the discovery with him, which he wanted to do before going to trial. Second, Hicks explained that he did not want to further delay his trial. Expanding upon that, Hicks explained that he had three lawyers over 15 months, and that accepting new counsel would further delay the proceedings. Thus, he preferred to waive his right to counsel and proceed to trial as soon as possible. Third, Hicks advised the court that his lawyers had referred to him as a "sovereign citizen," and he did not appreciate being given that label. As Hicks fielded questions from the court during the second *Faretta* hearing, he conferred with his standby counsel six different times.

The district court advised Hicks several times that he would be better served by accepting counsel for trial. Nonetheless, Hicks insisted on representing himself. However, at one point, when the court asked Hicks if he would accept counsel if it meant only a slight delay in his trial date, the following exchange took place:

> **Hicks**: Well, Your Honor, I have thought long and hard about this. And I keep going back and forth only because it's hard for me to sit here and look across, and that was my family. And that still is my family. And so that makes it a conflict of interest to a degree to me, as well. And so because of that, also two board members that I will not be able to subpoena at any time,

[4] Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

> this is a very hard decision. And so the decision I have to make at this time, Your Honor, I have to represent myself.
>
> **The Court**: So you're not interested in a continuance, meaning a brief extension?
>
> * * *
>
> **Hicks**: I still go back, you know, to I've been sitting here, you know, for 15 months. No discovery. You know, I've had certain attorneys, you know, appointed to me. I've paid an attorney appointed to me. I sat for nine months, you know, under the direction of Judge Sims and Judge Sullivan. In my opinion, I followed what was given to me.
>
> But because at that time, for whatever reason, the discovery still wasn't shown to me. And so but I did think about at the same time since I've had assistance of counsel with [standby counsel], I have thought about that.
>
> But I also have to think about the fact, you know, this is a lot on me, too. You know, sitting here deprived of my freedom, you know, I have to think about that, too. And so, in thinking about all that, I have given it consideration. And at this time, the number one thing is: I do not want to keep sitting here. And I know the discovery keeps growing, but I don't get to see it. I have to stick to the facts as just presented to me.
>
> Ms. Fitzgibbons, six months. Mr. Young, nine months to March. And so here I am sitting here again with assistance of counsel this time. And what I do not want to do is continue to waste the Government's time or my time.
>
> But I do appreciate you coming to me because I feel that's fair. But at this time, considering [standby counsel], as well, I would like to move forward representing myself.

J.A. 3094–96. Counting this affirmation, Hicks told the district court at least 10 times during the second *Faretta* hearing that he wanted to waive his right to counsel.

Despite professing offense that his attorney referred to him as a sovereign citizen, Hicks in fact abides by the sovereign citizen ideology, and he let his ideology be known during the *Faretta* hearing. For instance, after being sworn in, Hicks introduced himself "by way of restricted special appearance [as] United States Elector William Lamont Hicks." J.A. 3055–56. Hicks also told the district court that the gold hinge on the flag in the courtroom "mean[t] [that he was in] a war court." *Id.* at 3061. And Hicks made a few other unusual remarks, such as stating his belief that "the United States Government is in a receivership," *id.* at 3067, that the United States operates under "treaty law," *id.* at 3066, and that he wanted to speak to the United States Attorney for the District of Maryland to "correct the tax matter, which [was] the reason" everyone was there that day, *id.* at 3064.

At the end of the *Faretta* hearing, the district court found that Hicks' waiver of counsel was knowing, intelligent, and voluntary. Thus, the district court accepted Hicks' waiver and allowed him to proceed pro se.

Following the *Faretta* hearing, a new issue arose. Vicky Foster, one of the victims of the fraud scheme, was battling lung cancer. She lived in North Carolina and was receiving chemotherapy there, so she was unable to travel to Maryland for the trial. Therefore, in order to preserve Foster's testimony, the Government decided to depose her pursuant to Rule 15 of the Federal Rules of Criminal Procedure.[5] The Government offered to arrange for Hicks, who was detained, and Mendoza, who was out on bond, to attend the

[5] Rule 15 of the Federal Rules of Criminal Procedure allows the Government to depose a witness ahead of trial, and thereby preserve their testimony, if the witness will be unavailable at trial. *See* Fed. R. Crim. P. 15(a)(1) ("A party may move that a prospective witness be deposed in order to preserve testimony for trial.").

deposition. But Hicks waived his right to appear in person, and Mendoza (through her counsel) consented to appear virtually. As a result, the Government deposed Foster with Mendoza and her counsel appearing virtually. Hicks and his standby counsel also appeared virtually.

C.

Trial

The case proceeded to trial with Hicks representing himself. Hicks gave an opening statement and a closing argument, cross examined witnesses, and made objections. Hicks also testified in his own defense, telling the jury that he believed in the methods he taught his students, and that he never intended to dupe anyone. Hicks consulted with his standby attorney once during the trial.

Hicks' defense relied largely on sovereign citizen concepts. For instance, during his opening statement, Hicks discussed the Uniform Commercial Code.[6] And during his direct examination,[7] he testified:

> So, in 1791, the Philadelphia convention introduced the United States seat of government. And so in doing that, at conventions we bring ideas. And ideas can be turned into products and services that you get through your mind because your mind was your spiritual estate. And so because of that, they chose men because men were always to protect mothers and sons. And so because of that, that is our American system.

[6] The Uniform Commercial Code is a "uniform statute that governs commercial transactions including sales of goods, secured transactions, and negotiable instruments." *Uniform Commercial Code*, Black's Law Dictionary (11th ed. 2019).

[7] Hicks' direct examination was performed by standby counsel.

J.A. 1111. Then, during his closing argument, Hicks told the jury:

> Just because you didn't know you were a beneficiary doesn't mean you weren't or are not a beneficiary.
>
> The [Fourteenth] Amendment Citizen is a beneficiary of the [Fourteenth] Amendment: Congress is the trustee. And citizens and beneficiaries have no control whatsoever over the type, amount, content, substance, or frequency of distribution of benefits they receive.
>
> Just because you didn't know you were a trustee doesn't mean you weren't or are not a trustee.

Id. at 1352.

As to the substance of the scheme, Darshana Patel, one of the victims, testified at trial that, around the time she met Appellants, she "was looking for creative ways to finance more of [her] creative endeavors." J.A. 665. Patel testified that after she met Appellants, they told her that she could use "a trust strategy . . . that [was] beyond [her] awareness" to grow a quarter million dollar investment into $2.5 million. *Id.* As a result, in July 2017, Patel wired $5,000 to an account belonging to Appellants. At that time, Patel had lived in Georgia for approximately two decades, and her wire request listed her Georgia address and Georgia phone number. When asked at trial from where she had wired the money, Patel testified that she "would assume Atlanta, Georgia." *Id.* at 677. Evidence admitted at trial demonstrated that the wire was sent to an account in Rockville, Maryland, and the entire $5,000 was withdrawn from ATMs located in Rockville and Gaithersburg, Maryland.

At the close of all the evidence, the jury convicted Appellants of conspiracy to commit wire fraud and substantive wire fraud.

D.

Sentencing

After trial, Hicks underwent a forensic psychological evaluation ahead of sentencing. According to the report, Hicks suffers from delusions. The report also concluded that Hicks likely suffers from "schizoaffective disorder, bipolar type," and did not perceive his wrongdoing. J.A. 3170.

Hicks' sentencing took place a week before Mendoza's. Several victims testified at Hicks' sentencing. The victims described how Appellants' actions had affected them. The Government recognized that the victims' testimony would also relate to Mendoza's sentencing. Therefore, the Government asked the court to consider that same testimony when it came time for Mendoza's sentencing. The court agreed to do so but also asked the Government to obtain an expedited transcript so that Mendoza would have the opportunity to review it prior to her sentencing. Although Mendoza was not present at Hicks' sentencing, her counsel was, and her counsel agreed that arrangement would be "entirely satisfactory." J.A. 2761.

The district court calculated Hicks' United States Sentencing Guidelines ("Guidelines") range to be 235 to 293 months, and imposed a middle of the range sentence of 264 months of imprisonment, to be followed by three years of supervised release.

Mendoza was sentenced the following week. At the outset of her sentencing, Mendoza confirmed that she had received and reviewed the transcript from Hicks' sentencing, and that she had no objections to it being used for her own sentencing. The district court then calculated Mendoza's Guidelines range at 108 to 135 months. However, when imposing sentence, the court departed upward and imposed an above Guidelines sentence of 144 months of imprisonment to be followed by three years of supervised release. In explaining its chosen sentence, the court emphasized the integral role Mendoza played in the fraud scheme, given that she had managed the finances. The court also highlighted that Mendoza was more culpable than most defendants in her shoes because she had defrauded her victims in person, rather than over the internet, and had targeted individuals in dire financial positions as opposed to governmental or corporate victims. Nonetheless, while the court departed upward based on Mendoza's "major role" in the fraud, the court stated that it would have imposed the same sentence through an upward variance and the factors set forth in 18 U.S.C. § 3553(a) regardless. J.A. 3013 (district court stating, "[i]n the absence of such a departure, I would still vary upward for the same reasons and based on the need to reflect the seriousness of the offense and Ms. Mendoza's role in it"). J.A. 3013.

This consolidated appeal followed.

II.

A.

Hicks' Appeal

Hicks raises two related issues on appeal. First, he contends that the district court erred in accepting his waiver of counsel and allowing him to proceed pro se. This issue raises a mixed standard of review. We review for clear error the district's factual finding regarding competency. *United States v. Snyder*, --- F.4th ---, No. 25-4218, 2026 WL 2023813, at *5 (4th Cir. July 14, 2026). However, we review de novo whether a competent defendant did in fact waive his right to counsel. *Id.* ("Whether a defendant waived his right to counsel is a legal question we review de novo." (citation omitted)).

Second, and in the alternative, Hicks argues that the district court erred by not sua sponte ordering a competency evaluation for him prior to trial. We review this issue for plain error. *Snyder*, 2026 WL 2023813, at *5 ("When, as here, a defendant asks us to review whether a court should have 'sua sponte reconsider[ed] its decision that [he] was competent to stand trial and waive counsel,' we review for plain error." (alterations in original) (citation omitted)). "To succeed on plain-error review, [an appellant] must show (1) an error occurred; (2) the error was plain or obvious; and (3) the error affected his substantial rights." *United States v. Solis-Rodriguez*, 144 F.4th 617, 623 (4th Cir. 2025). But even if an appellant can satisfy all three requirements, "we will exercise our discretion to correct the error only if a refusal to do so would 'seriously affect[] the fairness, integrity or public reputation of judicial proceedings.'" *Id.* at 623–24 (alteration in original) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)).

1.

Waiver of Counsel

a.

Sixth Amendment Rights

"The Sixth Amendment guarantees to a criminal defendant the right to the assistance of counsel before he can be convicted and punished by a term of imprisonment." *United States v. Ductan*, 800 F.3d 642, 648 (4th Cir. 2015) (per curiam) (citing U.S. Const. amend VI). But "the Sixth Amendment also protects a defendant's affirmative right to self-representation." *Id.* Because these two rights exist in tension with one another -- and because pro se representation is the exception, not the rule -- we assume the defendant is represented by counsel unless and until he clearly and unambiguously waives his right to counsel. *Id.* at 650 ("[W]e have consistently held that as between counsel and self-representation, counsel is the 'default position' unless and until a defendant explicitly asserts his desire to proceed pro se." (citation omitted)).

A defendant can waive their right to counsel at a *Faretta* hearing. A defendant's waiver is effective when it "is (1) clear and unequivocal[;] (2) knowing, intelligent, and voluntary[;] and (3) timely." *United States v. Ziegler*, 1 F.4th 219, 226 (4th Cir. 2021) (quoting *United States v. Bernard*, 708 F.3d 583, 588 (4th Cir. 2013)). Of course, a defendant must also be mentally competent when waiving counsel, but no additional competence is required other than the competence required to stand trial.[8] *Id.*; *see also United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000) ("The Supreme Court has made clear that the standard of competence for waiving counsel is identical to the standard of competence for standing trial.").

There is "no precise formula [that] binds district courts when evaluating the competency to waive the right." *Ziegler*, 1 F.4th at 229. "The trial court must simply

[8] Hicks asserts that there is a higher level of competency required to waive counsel than that needed to stand trial. In support, he cites *Indiana v. Edwards*, 554 U.S. 164, 178 (2008), where the Supreme Court held that States may refuse to allow a borderline incompetent defendant to represent himself. Hicks misreads *Edwards*. *Edwards* does not preclude courts from allowing a competent (even if barely so) defendant to proceed pro se. As we explained in *United States v. Bernard*, 708 F.3d 583, 588–90 (4th Cir. 2013), *Edwards* merely gave courts discretion to refuse the pro se option to borderline defendants.

'assure itself that the defendant knows the charges against him, the possible punishment[,] and the manner in which an attorney can be of assistance.'" *Herrington v. Dotson*, 99 F.4th 705, 717 (4th Cir. 2024) (quoting *United States v. Roof*, 10 F.4th 314, 359 (4th Cir. 2021) (per curiam)). Finally, because the district court sits in a far "superior position to observe and understand" the defendant, we "grant district courts considerable discretion" when walking the "tightrope" that is strung at a *Faretta* hearing. *Ziegler*, 1 F.4th at 226.

b.

Hicks' Waiver of Counsel was Valid

As explained above, the district court conducted a thorough *Faretta* hearing. Throughout the district court's detailed and lengthy colloquy with Hicks, the court covered a range of topics. The court made sure that Hicks knew the charges against him, the potential penalties if convicted, and that he had the right to have a lawyer defend him at trial. The court inquired as to why Hicks wanted to proceed pro se, to which Hicks provided rational reasons -- namely, his dissatisfaction with his attorneys, his desire to get to trial as soon as possible, and his resentment at being referred to a sovereign citizen by his counsel. The court also cautioned Hicks that, if he proceeded pro se, he would be required to abide by courtroom protocol, be held to the Federal Rules of Evidence, and be liable for his own defense. Additionally, the court repeatedly told Hicks that he would be better off having counsel represent him at trial. And the court made sure that Hicks' decision was of his own free will and not the product of coercion.

Throughout all of this, Hicks stood firm in his desire to waive his right to counsel and represent himself at trial, and following this colloquy, the district court accepted that waiver. We see no fault in that decision.

c.

Hicks' Counter Arguments Fail

Hicks argues that the district court should have rejected his waiver, and he offers a few reasons in support. First, Hicks contends that his waiver was not knowingly and intelligently made. This is so, he contends, because of the "nonsensical answers" he gave throughout the hearing. Hicks' Opening Br. at 13.

To be sure, Hicks made some questionable statements at the *Faretta* hearing -- for example, his beliefs that a gold hinged flag indicated he was in a war court and that the United States operates under treaty law. But those statements do not cast doubt on the validity of his waiver. As explained, Hicks assured the district court that he understood the charges against him, knew the penalties if convicted, knew that he would need discovery to prepare a defense, and knew he would face a challenge at trial given his lack of legal training. Suffice it to say, Hicks knew what he was getting into when he asked to proceed pro se, and his sovereign citizen style statements do not vitiate that knowledge.[9]

[9] Hicks also asserts, in a single paragraph, that his waiver was not voluntary because he acted under "some imagined compulsion" when waiving his right to counsel. Hicks' Opening Br. at 14. However, Hicks cites neither law nor any part of the record to support this argument. We therefore deem the argument waived. *See* Fed. R. App. P. 28(a)(8)(A) (requiring the argument section of an appellant's opening brief to state the appellant's "contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"); *see also Grayson O Co. v. Agadir Int'l LLC*, 856 (Continued)

Next, Hicks argues that his waiver was equivocal and therefore ineffective. Toward the end of the *Faretta* hearing, after the court asked Hicks whether he would accept new counsel if it meant only a slight delay in the upcoming trial, Hicks responded that he "ha[d] thought long and hard about [that]" and that he "keep[s] going back and forth." J.A. 3094. From that single line, Hicks asserts that his waiver was equivocal. We disagree.

When viewed in context, that lone statement was Hicks merely explaining his rational for wanting to represent himself. After he made that statement, Hicks went on to explain to the court that he had prior attorneys who he felt had withheld discovery from him, how he felt that failure had prolonged the case, and how he wanted a trial soon so he could go home once he was acquitted. After unpacking those reasons, Hicks concluded: "But I do appreciate you coming to me because I feel that's fair. But at this time, considering [my current counsel], as well, I would like to move forward representing myself." J.A. 3096.

Thus, when viewed in context, Hicks' single remark about "going back and forth" actually underscores his thorough consideration of the decision to waive his right to counsel and represent himself as opposed to being a demonstration of equivocation.[10]

F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop [its] argument—even if [its] brief takes a passing shot at the issue." (internal quotation marks omitted) (alterations in original) (quoting *Brown v. Nucor Corp.*, 785 F.3d 895, 923 (4th Cir. 2015))).

[10] Hicks also makes a last ditch argument that his performance at trial was so lackluster that the district court should have reconsidered whether he was competent to waive his counsel. We need not consider whether a defendant's post-*Faretta* hearing conduct can negate an otherwise valid waiver because, as discussed below, Hicks' (Continued)

2.

Competency Evaluation

a.

Due Process and Statutory Background

"The conviction of a defendant when he is legally incompetent is a violation of due process." *United States v. Mason*, 52 F.3d 1286, 1289 (4th Cir. 1995). "[T]he legal test for competency is whether the defendant 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" *Bernard*, 708 F.3d at 593 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam)).

To ensure that no incompetent defendant is ever placed on trial, Congress enacted 18 U.S.C. § 4241. That statute requires "trial courts [to] conduct competency hearings under specified circumstances." *United States v. Banks*, 482 F.3d 733, 742 (4th Cir. 2007) (internal quotation marks omitted) (quoting *Mason*, 52 F.3d at 1289). Relevant here, § 4241(a) requires a district court to order a competency evaluation of a defendant, even when no party requests one,

> if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

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unorthodox trial strategy did not give the district court any reason to question Hicks' competency.

18 U.S.C. § 4241(a). When considering whether reasonable cause exists, courts consider "evidence of irrational behavior, the defendant's demeanor at trial, and medical opinions concerning the defendant's competence." *Bernard*, 708 F.3d at 592–93 (quoting *Mason*, 52 F.3d at 1290).

Here, Hicks brings what is known as a "procedural competency claim." *See Banks*, 482 F.3d at 742. To prevail on this type of claim, the defendant "need not demonstrate on appeal that he was in fact incompetent" at trial. *Id.* Rather, he need only show "that the district court should have ordered a hearing to determine the ultimate fact of competency." *Id.* This is no small task. "Whether 'reasonable cause' exists is a question left to the sound discretion of the district court." *Bernard*, 708 F.3d at 592. And, again, we defer "to the district court because it is in a superior position to adjudge the presence of indicia of incompetency constituting reasonable cause to initiate a hearing." *Banks*, 482 F.3d at 743. But again, because this issue was raised for the first time on appeal, we review it for plain error. *Snyder*, ("When, as here, a defendant asks us to review whether a court should have 'sua sponte reconsider[ed] its decision that [he] was competent to stand trial and waive counsel,' we review for plain error." (alterations in original) (citation omitted))

b.

<u>The District Court Had No Reason to Order a Competency Evaluation</u>

Hicks contends that the district court erred by not ordering a competency evaluation for him. He asserts that his behavior before the district court was so unusual that the district court had reasonable cause to question his competency, and the court therefore erred in declining to sua sponte order a competency evaluation pursuant to § 4241(a). We discern no error, much less plain error.

First, during the *Faretta* hearing, Hicks asked to waive his right to counsel and proceed pro se. In doing so, Hicks provided the district court with three cogent reasons as to why he wished to go to trial without counsel: he (1) felt his attorneys had withheld discovery from him; (2) did not want to delay his trial by waiting for a new attorney to be brought into the case and for that attorney to familiarize themselves with the evidence; and (3) did not like that his lawyers were referring to him as a sovereign citizen. Additionally, Hicks had standby counsel with him at the *Faretta* hearing, and he conferred with standby counsel <u>six times</u> during that hearing.

Trial was no different. Hicks represented himself for the entirety of trial, during which he gave an opening statement, cross examined witnesses, and objected multiple times. And Hicks even took the stand in his own defense and testified as to his purported good faith belief in his "advice." Such testimony, if believed by the jury, would have led to an acquittal. *See S. Atl. Ltd. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 531 (4th Cir. 2002) (explaining that good faith belief is a complete defense to fraud charges). Hicks also gave a closing argument, and he consulted with his standby counsel at least once during trial.

Hicks' behavior at trial did not provide reasonable cause to question his competence. At all times, Hicks knew where he was and what he was doing. Hicks was even able to develop a defense to the charges against him, which we have previously recognized is some indication of competence. *See Ziegler*, 1 F.4th at 231 (recognizing that the defendant's "apparent ability to consider strategic choices, develop a defense strategy, and operate in the courtroom is all evidence of competence to . . . stand trial"). And Hicks' ability to consult with his standby counsel further confirms that he was competent to stand trial. Thus, we do not fault the district court for not questioning Hicks' competence.

c.

Hicks' Counter Arguments Fail

Hicks' arguments to the contrary are unavailing. Hicks' primary argument rests on the fact that he espoused sovereign citizen beliefs before the district court. To hear Hicks tell it, his sovereign citizen style responses to the district court's questions at the *Faretta* hearing were "incoherent and often nonresponsive," and his performance at trial was an "even greater display" of his incompetence, given that it relied largely on sovereign citizen beliefs. Hicks' Opening Br. at 8. Thus, Hicks suggests, after watching all this play out, the district court had reasonable cause to order a competency evaluation. Again, we disagree.

First, as we and other courts have explained "[§] 4241(a) does not require a competency hearing any time a defendant is . . . committed to a 'frivolous legal strategy.'" *Ziegler*, 1 F.4th at 231 (quoting *Banks*, 482 F.3d at 743); *see also United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003) ("Sometimes [a defendant's unusual] beliefs are sincerely held, sometimes they are advanced only to annoy the other side, but in neither event do they imply mental instability or concrete intellect so deficient that trial is impossible." (internal citation omitted)). And "bizarre or irrational" behavior "does not invariably compel a finding of incompetency." *Bernard*, 708 F.3d at 593.

Hicks denies that he is asking us to adopt a categorical rule that a district court must sua sponte order a competency evaluation anytime a defendant makes a sovereign citizen style defense. But we fail to see how that can be. After all, Hicks carried on a coherent conversation with the district court at the *Faretta* hearing, he prepared his own defense at trial, and he routinely conferred with his standby counsel. If we were to agree with Hicks that a competency evaluation was necessary based on these facts, then we would necessarily be agreeing that a sovereign citizen defendant's conviction must be reversed anytime a district court declines to question the defendant's competence merely because he espouses sovereign citizen beliefs, no matter how lucid he is. We decline to do so.

Hicks' second argument -- that the district court failed to inquire into his competency -- fares no better. To hear Hicks tell it, the "failure to exercise discretion is itself an abuse of discretion." Hicks' Opening Br. at 9. And because Hicks posits that the district court never inquired into his competency, Hicks contends that the district court necessarily abused its discretion. But, Hicks' argument rests on a faulty premise because the district court did, in fact, address Hicks' competence at the *Faretta* hearing when it engaged in a lengthy colloquy with Hicks and found him competent to waive his counsel. Because the "the standard of competence for waiving counsel is identical to the standard of competence for standing trial," we reject the argument that the district court failed to address Hicks' competence. *Frazier-El*, 204 F.3d at 559.

Hicks also points to his post-trial forensic psychological evaluation, which opined that Hicks suffers from delusions, many of which "have a basis in fringe theories," and that his most likely diagnosis is "schizoaffective disorder, bipolar type." J.A. 3169–70.

Because the district court was aware at sentencing that Hicks has some mental impairments, Hicks now argues the district court should have ordered a competency evaluation. Again, we disagree.

For one thing, Hicks' psychological evaluation was conducted post-trial, and it was intended to mitigate Hicks' culpability. The district court had little reason to construe it as an indictment of Hicks' competency months earlier. This is especially so given that we have said "retrospective competency hearings are generally disfavored." *Mason*, 52 F.3d at 1293. For another thing, we have repeatedly rebuffed defendants' attempts to raise competency concerns only after they have been convicted. *See, e.g.*, *Ziegler*, 1 F.4th at 232 ("The first time Ziegler mentioned mental illness was after the jury found him guilty. And the district court reasonably discounted Ziegler's claims for having been raised only after the jury verdict."); *see also Bernard*, 708 F.3d at 593 ("In this case, we cannot say Appellant's behavior during his trial called into question the district court's decision-making concerning Appellant's competency to stand trial and waive counsel . . . . In fact, Appellant's mental state did not show marked decline until the sentencing hearing.").

Finally, the mere fact that Hicks had some mental infirmities was not enough to entitle him to a competency evaluation. *Ziegler*, 1 F.4th at 231 ("[N]ot every manifestation of mental illness demonstrates incompetence to stand trial." (quoting *Burket v. Angelone*, 208 F.3d 172, 192 (4th Cir. 2000))); *Bernard*, 708 F.3d at 593 ("[T]he presence of some degree of mental illness is not to be equated with incompetence." (quoting *Hall v. United States*, 410 F.2d 653, 658 (4th Cir. 1969))). Hicks needed to show that his mental illness(es) somehow impaired his ability understand the nature of the proceedings against him or interfered with his ability to consult with counsel. *See Bernard* 708 F.3d at 593. He has failed to do so.

Thus, we reject Hicks' procedural competency claim and affirm his conviction.

B.

Mendoza's Appeal

Mendoza raises four challenges on appeal. First, she claims the Government's use of Foster's video deposition violated her Confrontation Clause rights. Second, she argues that the evidence adduced at trial was insufficient to convict her of substantive wire fraud. Third, she contends that she was denied the right to be present at her own sentencing. Fourth, and finally, she argues that the district erred in departing upward from the Guidelines. We reject each argument.

1.

Confrontation Clause

Mendoza first contends that her Confrontation Clause rights were violated when the Government admitted the deposition testimony of Foster into evidence at trial. "Pursuant to the Confrontation Clause, a court will not admit into evidence 'testimonial statements of a witness who did not appear at trial unless [s]he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *United States v. Smith*, 117 F.4th 584, 600 (4th Cir. 2024) (quoting *United States v. Dargan*, 738 F.3d 643, 650 (4th Cir. 2013)).

Mendoza argues that her Confrontation Clause rights were violated because the Government deposed Foster virtually, which forced Mendoza "to cross examine Foster over video," rather than face to face. Mendoza's Opening Br. at 12. Mendoza does not dispute that Foster -- a woman in the middle of chemotherapy treatment in another state -- was unavailable at trial. Instead, Mendoza challenges the procedure used to secure Foster's testimony ahead of trial. But Mendoza fails to grapple with the fact that she consented to the deposition procedure she now complains of and thus waived this argument.

Rule 15 of the Federal Rules of Criminal Procedure sets forth the process to preserve the testimony of a witness that will be unavailable at trial. Fed. R. Crim. P. 15(a)(1) ("A party may move that a prospective witness be deposed in order to preserve testimony for trial."). To comply with the Confrontation Clause, Rule 15 provides the defendant with an opportunity to be physically present at the deposition. *See Smith*, 117 F.4th at 601 ("[T]he Supreme Court has recognized that Rule 15 comports with the purposes of the Confrontation Clause." (citing *Maryland v. Craig*, 497 U.S. 836, 845–46 (1990))).

The process for exercising the right of a defendant to appear in person at a Rule 15 deposition varies with the circumstances. If the defendant is out on bond, as Mendoza was here, they have the right to appear in person, but they must request the opportunity to exercise that right. Fed. R. Crim. P. 15(c)(2) ("[A] defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court."). In other words, defendants on bond operate under an opt-in system. *See id.*

This is where Mendoza's argument falters. Mendoza was on pre-trial bond when the Government deposed Foster, and she never requested to appear in person at Foster's deposition. In fact, Mendoza (through her counsel) actually *agreed* to appear remotely at the deposition and to cross examine Foster over video. Finally, Mendoza never once objected to the video deposition being admitted into evidence at trial. Therefore, we readily conclude that Mendoza waived any argument that Foster's Rule 15 deposition violated her Confrontation Clause rights. *See United States v. Boyd*, 5 F.4th 550, 555 (4th Cir. 2021) ("[W]aiver is 'the intentional relinquishment or abandonment of a known right.'" (quoting *Wood v. Milyard*, 566 U.S. 463, 474 (2012))).

2.

Sufficiency of the Evidence of Wire Fraud

Mendoza next challenges her wire fraud conviction. "When reviewing the sufficiency of the evidence supporting a count of conviction, this Court considers whether there is substantial evidence, taking the view most favorable to the Government, to support it." *United States v. Fall*, 955 F.3d 363, 375 (4th Cir. 2020) (internal quotation marks and citation omitted).

"The wire fraud statute provides that 'whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of wire communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be [guilty of a felony].'" *United States v. Taylor*, 942 F.3d 205, 213 (4th Cir. 2019) (cleaned up) (quoting 18 U.S.C. § 1343).

The wire fraud statute has three elements. The first "[t]wo are substantive: (1) the defendant [must have] devised, or intended to devise, a scheme or artifice to defraud; and

(2) the defendant [must have] used a wire to transmit any signal to execute the scheme or artifice." *United States v. Elbaz*, 52 F.4th 593, 603 (4th Cir. 2022). "The third element is jurisdictional: The wire must [have] be[en] 'in interstate or foreign commerce.'" *Id.* (quoting *Taylor*, 942 F.3d at 214). Here, Mendoza challenges only the third element. She contends that the Government failed to establish that a wire traveled across state lines. We disagree.

To start, the evidence adduced at trial demonstrates that the wire originated in Georgia. The victim who sent the wire was a Georgia resident, and she had lived there for two decades. On the wire request, the Georgia based victim listed her Georgia address and Georgia phone number. And at trial, the victim testified that she "would assume" she made the $5,000 wire transfer to Mendoza from Georgia. J.A. 677. A reasonable jury could have heard this evidence and concluded that the wire originated in Georgia.

A reasonable jury likewise could have found that the wire culminated in Maryland. For one thing, the wire listed Rockville, Maryland, as its destination. For another, the evidence adduced at trial demonstrated that every penny of the wire transfer was withdrawn from ATMs in either Rockville or Gaithersburg, Maryland. Thus, a reasonable jury could have found that the wire traveled from Georgia to Mayland. That is sufficient to establish the jurisdictional element of § 1343.

In an attempt to avoid this conclusion, Mendoza argues that the Government failed to carry its burden because it did not identify "the location of the bank's servers or confirm the wire's actual path." Mendoza's Opening Br. at 8. This argument misses the point. The Government did not need to show every twist and turn the wire took. The Government only had to prove that the wire crossed a state line. And, as explained above, the evidence, as a reasonable jury could have found it, demonstrated that the wire originated in Georgia and traveled to Maryland. That is enough to prove the wire crossed a state line. We therefore reject this argument.

3.

Sentencing

a.

Right to be Present at Sentencing

For her third assignment of error, Mendoza argues that she was deprived of her right to be present at her sentencing. Hicks was sentenced a few days prior to Mendoza, and some of the victims testified at Hicks' sentencing. Rather than making those same victims return to court and recount the same testimony at Mendoza's sentencing, the district court considered the victim impact testimony elicited at Hicks' sentencing when it sentenced Mendoza. And because Mendoza did not attend Hicks' sentencing, and therefore was not present when the victims testified against her for sentencing purposes, she posits that the district court denied her the right to be present at her own sentencing. This argument blinks reality.

Rule 43 of the Federal Rules of Criminal Procedure guarantees a defendant the right to be "present" at their own sentencing. Fed. R. Crim. P. 43(a) ("[T]he defendant must be present at . . . sentencing.). That means physical presence. *United States v. Lawrence*, 248 F.3d 300, 303–04 (4th Cir. 2001). But Mendoza *was* at her own sentencing. She was there in person when the district court calculated her Guidelines range. She had an opportunity to plead her cause and provide allocution face to face with the district court. And she was there in the courtroom when the district court imposed her sentence. To state the obvious, then, Mendoza was at her own sentencing, just as Rule 43 demands.

In reality, Mendoza is complaining about the fact that the district court considered hearsay testimony when fashioning her sentence. Mendoza's Opening Br. at 20 (asserting that she "ha[d] a constitutional right to hear [the victims' testimony] in person"). But that grievance goes nowhere.

To start, Mendoza's counsel explicitly agreed that the district court could consider the victims' testimony from Hicks' sentencing when fashioning Mendoza's sentence. J.A. 2761 (counsel stating that it would be "entirely satisfactory" to use the victim impact testimony from Hicks' sentencing so long as Mendoza could review a transcript of that testimony prior to her sentencing); *id.* at 2981–82 (counsel confirming that Mendoza was provided with and had reviewed the transcripts of the victim impact testimony from Hicks' sentencing). That consent constitutes waiver. *United States v. Boyd*, 5 F.4th 550, 555 (4th Cir. 2021) ("[W]aiver is 'the intentional relinquishment or abandonment of a known right.'" (quoting *Wood v. Milyard*, 566 U.S. 463, 474 (2012))).

And even if this argument were not waived, we would review the issue for plain error and be compelled to affirm. *See United States v. Muslim*, 944 F.3d 154, 162–63 (4th Cir. 2019) (plain error review applies where the defendant "failed to raise this issue below"). Although Mendoza contends that she had a constitutional right to hear the victims' testimony firsthand, we have unequivocally held "that the Confrontation Clause does not apply at sentencing." *United States v. Powell*, 650 F.3d 388, 393 (4th Cir. 2011).

So, there is no constitutional defect here. Nor is there any hearsay issue. Rather than excluding hearsay at sentencing, federal law blesses its use. *See* 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); *see also Powell*, 650 F.3d at 394 (observing that presentence reports are "often chock full of hearsay").

Thus, we discern no error, let alone plain error, in the district court's decision to save the victims a second trip to court.

b.

Reasonableness of the Sentence

Finally, Mendoza challenges her sentence. We review a district court's sentencing decision for reasonableness. *United States v. Oliver*, 133 F.4th 329, 338 (4th Cir. 2025). Reasonableness has two components: procedural and substantive reasonableness. *United States v. Fowler*, 58 F.4th 142, 150 (4th Cir. 2023). For a sentence to be procedurally reasonable, the district court must properly calculate the Guidelines range, consider the 18 U.S.C. § 3553(a) factors, and adequately explain the sentence imposed. *United States v. Provance*, 944 F.3d 213, 218 (4th Cir. 2019). If a sentence is procedurally reasonable, "[w]e then consider the substantive reasonableness of the sentence, taking into account the totality of the circumstances, including the extent of any variance from the Guidelines range and giving due deference to the district court's decision that the 18 U.S.C. § 3553(a) factors, on [the] whole, justify" the sentence imposed. *Oliver*, 133 F.4th at 338 (quoting *United States v. Huskey*, 90 F.4th 651, 677 (4th Cir. 2024)).

Here, Mendoza raises two challenges to her sentence. She first contends that the district court erred by using the wrong comparator when sentencing her. Put differently, Mendoza claims that the district court sought to impose a similar sentence to the one Hicks received instead of those received by defendants similarly situated to Mendoza. *See* 18 U.S.C. § 3553(a)(6) (requiring courts to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" when imposing sentence). And because the district court supposedly ignored those similarly situated defendants, Mendoza claims her sentence is procedurally unreasonable.

This argument does not withstand scrutiny. Indeed, an examination of the record demonstrates that the district court considered defendants convicted of the same crime and who landed in the same Guidelines range as Mendoza. But the court ultimately concluded that Mendoza's crime was more egregious than those of the comparator defendants and therefore warranted a more serious punishment than most. Mendoza, unlike many other fraudsters in her Guidelines range, personally interacted with her victims rather than scamming them over the internet, which made her conduct more reprehensible in the district court's view. And Mendoza chose to defraud individuals, rather than a governmental entity or a corporation, meaning her victims were more personally impacted by the fraud scheme, with some victims even losing their homes. Because the district court adequately considered and rejected sentences received by similarly situated defendants, including Hicks, we reject this argument.

Next, Mendoza argues that the district court erred in departing upward from the Guidelines sentencing range. We assume for present purposes that the departure was erroneous, but we nevertheless affirm because the district court stated that it would have imposed an identical above Guidelines sentence as a variance. That variance would have been reasonable under the circumstances.

We review procedural sentencing errors for harmlessness. *United States v. Mills*, 917 F.3d 324, 330 (4th Cir. 2019). An error is harmless if (1) the district court would have given the same sentence absent the error and (2) that sentence would have nevertheless been reasonable. *United States v. Savillon-Matute*, 636 F.3d 119, 123 (4th Cir. 2011). The government carries the burden of showing harmlessness. *United States v. Simmons*, 143 F.4th 200, 211 (4th Cir. 2025).

While a district court can utilize a departure to impose an above-Guidelines sentence, the court can also reach that same destination through a variance.[11] *United States v. Evans*, 526 F.3d 155, 164 (4th Cir. 2008) ("[T]he advisory Guidelines departure provisions provide[] *one way* for a district court to fashion a reasonable sentence outside the Guidelines range, it is *not* the only way."). Here, when departing upward, the court explained that it would have varied upward to the same sentence using the § 3553(a) factors

[11] "Departures are enhancements of, or subtractions from, a guidelines calculation based on a specific Guidelines departure provision." *United States v. Legins*, 34 F.4th 304, 324 (4th Cir. 2022) (internal quotation marks omitted) (quoting *United States v. Brown*, 578 F.3d 221, 225 (3d Cir. 2009)). "Variances, in contrast, are discretionary changes to a guidelines sentencing range based on a judge's review of all the § 3553(a) factors." *Id.* (quoting *Brown*, 578 F.3d at 226).

had a departure been unavailable. Thus, even assuming the departure was erroneous, the departure is harmless so long as that identical upward variance would have been reasonable. *Savillon-Matute*, 636 F.3d at 123 ("[I]t would make no sense to set aside [a] reasonable sentence and send the case back to the district court since it has already told us that it would impose exactly the same sentence, a sentence we would be compelled to affirm." (citation omitted)). Here, we conclude that the sentence imposed would have been reasonable.

As explained, the district court concluded that Mendoza was an atypical wire fraud defendant, and her conduct did not align with that of other defendants in her Guidelines range. Mendoza stole from those she personally knew, and she caused severe harm to her victims, including sending them into bankruptcy and causing some who had been current on their mortgages prior to encountering Mendoza to lose their homes. On this record, we cannot say that the district would have erred by imposing an upwardly variant sentence. Therefore, we reject this challenge and affirm Mendoza's sentence.

III.

Pursuant to the foregoing, the judgments below are

AFFIRMED.