

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-2765

United States of America,

Appellee,

v.

Robert Allen Walters, also known as
Michael Genovese, also known as
Robert Genovese,

Appellant.

*
*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of South Dakota.

[UNPUBLISHED]

Submitted: September 28, 2007
Filed: October 1, 2007

Before BYE, RILEY, and MELLOY, Circuit Judges.

PER CURIAM.

Robert Allen Walters appeals the sentence imposed by the district court¹ after he pleaded guilty to mailing a threatening communication, in violation of 18 U.S.C. § 876(c). He argues the district court erred in applying an enhancement under U.S.S.G. § 2A6.1(b)(2) upon determining that the offense involved more than two

¹The Honorable Charles B. Kornmann, United States District Judge for the District of South Dakota.

threats. Specifically, he challenges the district court's finding that the letters in question were objectively threatening.

We review the district court's application of the Guidelines de novo and its factual findings for clear error. See United States v. Amsden, 213 F.3d 1014, 1015 (8th Cir. 2000). We agree with the district court's application of section 2A6.1(b)(2), because the letters were substantially and directly related to the offense conduct. See U.S.S.G. § 2A6.1, comment. (n.1) (in determining whether enhancement should apply, court should consider conduct that is "substantially and directly connected to the offense, under the facts of the case taken as a whole"). We also conclude that the court did not clearly err in finding the letters objectively threatening, because we believe that unambiguous language in the letters would lead any reasonable person familiar with the context to perceive the letters as threatening. See United States v. Bellrichard, 994 F.2d 1318, 1323-24 (8th Cir. 1993) (standard is whether "a reasonable recipient, familiar with the context of the communication, would interpret it as a threat"; communications must be viewed both in "textual context and also in the context of the totality of the circumstances in which the communication was made").

Accordingly, we affirm.
