IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10527
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEVE WAYNE HOLLOWAY, a/k/a
Steve Dwayne Holloway,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-027-A

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(January 25, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Steve Wayne Holloway, a/k/a Stevie Dwayne Holloway, was convicted by a jury of two counts of interfering with commerce by robbery and two counts of using and carrying a firearm in a crime of violence, and pleaded guilty to one count of felon in possession of a firearm. He was sentenced to a total of 462 months imprisonment, three years supervised release, and a $250 special assessment.

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

This Court reviews the sufficiency of an indictment de novo. United States v. Nevers, 7 F.3d 59, 62 (5th Cir. 1993), cert. denied, 114 S. Ct. 1124 (1994). An indictment is constitutionally sufficient if it "1) enumerates each prima facie element of the charged offense, 2) notifies the defendant of the charges filed against him, and 3) provides the defendant with a double jeopardy defense against future prosecutions." Id.

An indictment that tracks the statutory language is generally sufficient "as long as those words fully, directly, and expressly, without any uncertainty or ambiguity, set forth all of the elements necessary to constitute the offense intended to be punished." United States v. Arlen, 947 F.2d 139, 145 (5th Cir. 1991) (internal quotations and citation omitted), cert. denied, 112 S. Ct. 1480 (1992).

The indictment tracked the statutory language and provided a cite to the appropriate statute. See 18 U.S.C. § 1951(a). Holloway argues that the indictment is insufficient because although it tracked the language in § 1951(a), which uses the terms "affects commerce or the movement of any article or commodity in commerce," see 18 U.S.C. § 1951(a), it did not track the language defining "commerce." See id. at § 1951(b)(3). Although the indictment did not track the definitional sections, the indictment cited the appropriate statute. Section 1951(a) cannot be read properly without the definitional sections of § 1951(b). The indictment directed Holloway to the entire statute, and this statute clearly limited the term commerce to interstate commerce. Holloway cannot demonstrate prejudice

because the indictment failed to track the statutory language of § 1951(b)(3). See United States v. Maggitt, 784 F.2d 590, 598-99 (5th Cir. 1986) (indictment which tracked the statutory language but did not expressly include the definitional sections of the statute was sufficient); see also United States v. Shelton, 937 F.2d 140, 142 (5th Cir.) ("an indictment is read for [its] clear meaning and convictions will not be reversed for minor deficiencies that do not prejudice the accused"), cert. denied, 112 S. Ct. 607 (1991).

To the extent that Holloway argues for the first time in his reply brief that the indictment was insufficient to establish that the grand jury determined that there was probable cause that a federal offense occurred, this issue is waived. United States v. Heacock, 31 F.3d 249, 259 n.18 (5th Cir. 1994).

Holloway also argues that his convictions under §§ 924(c) and 1951 for a single robbery violate the Double Jeopardy Clause. He concedes that his argument is foreclosed by this Court's decision in United States v. Martinez, 28 F.3d 444 (5th Cir.), cert. denied, 115 S. Ct. 281 (1994), but has raised the issue on appeal to preserve the alleged error for further review. The district court properly denied the motion to dismiss.

AFFIRMED.