United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 28, 2026
Thomas B. Plunkett, III
Clerk

No. 25-20494

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KELVIN PATTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:22-CR-566-1

Before RICHMAN, HAYNES, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Kelvin Patton was convicted after a bench trial of interference with commerce through robbery in violation of 18 U.S.C. § 1951, and brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii). He was sentenced to 146 months of imprisonment. We affirm.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I

Patton's charges arose from an armed robbery that occurred in a Denny's Restaurant parking lot in Houston, Texas. The Denny's manager, whom we will refer to as MH, had gone to the bank to deposit cash from the night before and to obtain change for the restaurant to use over the weekend. Patton and his accomplices followed MH from the bank to Denny's. As MH was walking from his car to the Denny's building with the commercial bank bag containing $1,550 in cash, Patton approached him, demanded the bank bag, and struck MH with a handgun. Patton then fled the scene and was later identified after a traffic stop. Video of the robbery was captured on Denny's security cameras.

Patton was indicted for Hobbs Act robbery, brandishing a firearm during a crime of violence, and possession of a firearm after a felony conviction. He was also charged with aggravated robbery in state court and pleaded guilty to the state charges before his federal criminal trial.

Before the federal trial, Patton agreed to plead guilty to possession of a firearm after a felony conviction. Accordingly, the possession charge did not proceed to trial. Patton also stipulated to facts underlying the other charges prior to trial. The sole issue for trial was whether the Government could prove beyond a reasonable doubt that the robbery interfered with interstate commerce.

At trial, an employee of the Denny's corporate office testified that, because of the robbery, he had to close the Denny's for a few hours while he found a manager to replace MH, who had sustained injuries and was unable to work. The employee also testified that the Denny's pays 7.5%-8% of its gross revenue to Denny's Corporate in South Carolina as a franchise fee, and that Denny's uses a supply chain that purchases goods from all over the

country. Denny's also paid MH for the time that he missed work due to his injuries.

After the trial, the Government dismissed the possession of a firearm after a felony conviction charge. The district court found that the interstate commerce element of the Hobbs Act was met because the robbery depleted the assets of a business that purchases out-of-state goods and supplies. The district court also concluded that the victim of the crime was a business, Denny's, and not an individual, MH, because the robbery occurred on Denny's property, MH was acting in the scope of his employment as a Denny's manager, and the money belonged to Denny's.

II

Patton argues that there was insufficient evidence that the victim of the robbery was the Denny's restaurant. He maintains that the Denny's manager, individually, was the crime's victim. Patton relatedly argues that the subjective intent of the robber is relevant to whether the victim is a business or an individual for purposes of the Hobbs Act. Patton also argues that there was insufficient evidence that the robbery had a de minimis effect on interstate commerce. He contends that the Government must meet a higher burden of proving that the robbery had a substantial impact on interstate commerce for the Hobbs Act to apply.

When reviewing a claim of insufficient evidence following a bench trial conviction, we focus on "whether the finding of guilt is supported by substantial evidence, *i.e.*, evidence sufficient to justify the trial judge, as the trier of fact, in concluding beyond a reasonable doubt that the defendant is guilty."[1] We must neither weigh the evidence nor determine the credibility

[1] *United States v. Tovar*, 719 F.3d 376, 388 (5th Cir. 2013) (internal quotation marks and citation omitted).

of witnesses, but instead we "must view all evidence in the light most favorable to the government and defer to all reasonable inferences drawn by the trial court."[2] For a bench trial, the defendant's "plea of not guilty serves as a motion for acquittal," thereby preserving the issue of sufficiency of the evidence for appellate review.[3]

The Hobbs Act provides, in relevant part, that "[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery . . . shall be fined . . . or imprisoned not more than twenty years."[4] Accordingly, to sustain Patton's robbery conviction, the Government had to prove a robbery that affects interstate commerce.[5]

Contrary to Patton's argument, the Government need not show that the robbery had a substantial impact on interstate commerce; only a de minimis impact on interstate commerce is required to satisfy the jurisdictional requirement of the Hobbs Act.[6] We have stated that "a business's activities need have only a slight effect on interstate commerce."[7]

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[2] *Id.* (internal quotation marks and citation omitted); *United States v. Lott*, 53 F.4th 319, 322 (5th Cir. 2022).

[3] *United States v. Rosas-Fuentes*, 970 F.2d 1379, 1381 (5th Cir. 1992); *United States v. Haggerty*, 997 F.3d 292, 295 (5th Cir. 2021).

[4] 18 U.S.C. § 1951(a).

[5] *See United States v. Jackson*, 88 F.4th 596, 600 (5th Cir. 2023).

[6] *United States v. Hebert*, 131 F.3d 514, 523 (5th Cir. 1997) (explaining that substantial impact argument is foreclosed by *United States v. Robinson*, 119 F.3d 1205 (5th Cir. 1997) and subsequent cases).

[7] *Jackson*, 88 F.4th at 600.

For example, it is sufficient that a business purchases or uses out-of-state goods.[8]

Moreover, "[t]he crime qualifies under the Hobbs Act when it merely depletes the assets of a commercial enterprise, impairing or delaying its ability to buy goods or services in interstate commerce."[9] The Government need not prove that the depletion of its assets caused the business to be unable to purchase goods or delayed shipments to the business.[10] "Rather, a showing that the business regularly buys goods from out of state allows an inference that the robbery will impair a future purchase."[11]

In this case, the evidence at trial showed that the stolen cash belonged to Denny's and that Denny's purchases out-of-state goods. These facts establish that the robbery had a de minimis effect on interstate commerce thereby satisfying the jurisdictional element of the Hobbs Act.[12] Contrary to Patton's argument, the criminal's intended victim is not relevant to whether the interstate commerce element of the Hobbs Act is met.[13]

We conclude the district court's finding that the robbery interfered with interstate commerce is supported by substantial evidence.[14]

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[8] *Id.*

[9] *Id.* (internal quotation marks and citation omitted).

[10] *Hebert*, 131 F.3d at 523 n.8.

[11] *Id.*

[12] *See United States v. Robinson*, 119 F.3d 1205, 1212 (5th Cir. 1997) (defining de minimis effect on interstate commerce as a depletion of the assets of a business that purchases out-of-state goods and supplies).

[13] *See United States v. Buck*, 847 F.3d 267, 276 (5th Cir. 2017) (explaining that intent to affect interstate commerce is not a required element of the Hobbs Act).

[14] *See Jackson*, 88 F.4th at 600-02; *Hebert*, 131 F.3d at 523-24.

III

Patton asserts that the district court erred by denying the U.S.S.G. § 3E1.1 reduction, as he stipulated to the facts of the robbery prior to trial. He argues that the § 3E1.1 reduction should not have been denied merely because he challenged the Government's evidence regarding the robbery's connection to interstate commerce.

Patton preserved this issue by objecting on this basis in district court. A defendant may receive a two-level reduction in his offense level if he "clearly demonstrates acceptance of responsibility for his offense."[15] A defendant who chooses to go to trial is not automatically excluded from receiving this reduction.[16] Nonetheless, application of the adjustment in these circumstances is "rare."[17] The defendant has the burden of demonstrating that he is entitled to a reduction,[18] and we examine the denial of a reduction for acceptance of responsibility with a standard of review that is even more deferential than a pure clearly erroneous standard and will affirm unless the denial is without foundation.[19]

Patton does not point to any case supporting his position that his case is a rare one where a defendant who has gone to trial should have been awarded the § 3E1.1 reduction.[20] The record shows that Patton denied

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[15] U.S. SENT'G GUIDELINES MANUAL § 3E1.1(a) (U.S. SENT'G COMM'N 2025).

[16] U.S.S.G. § 3E1.1 cmt. n.2.

[17] *Id.*

[18] *United States v. Perez*, 915 F.2d 947, 950 (5th Cir. 1990).

[19] *United States v. Rudzavice*, 586 F.3d 310, 315 (5th Cir. 2009); *see* U.S.S.G. § 3E1.1 cmt. n.5.

[20] U.S.S.G. § 3E1.1 cmt. n.2.

involvement in the robbery during the police's investigation. While admitting he committed the robbery, Patton did not plead guilty or request a conditional plea prior to trial.[21] Unlike cases where the defendant challenges a technical issue, such as venue, or proceeds to trial after an *Alford* plea,[22] the interstate commerce requirement of the Hobbs Act is a "substantive element of the crime."[23] Additionally, Patton challenges the sufficiency of the evidence, which may be considered as a factor that indicates the defendant failed to accept responsibility for the offense.[24]

The district court's decision not to apply a reduction for acceptance of responsibility was not without foundation.

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AFFIRMED.

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[21] *See United States v. Farias*, 469 F.3d 393, 400 (5th Cir. 2006).

[22] *See North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970).

[23] *United States v. Robinson*, 119 F.3d 1205, 1212 n.4 (5th Cir. 1997); *see Farias*, 469 F.3d at 400 (comparing entitlement to reduction for acceptance of responsibility in cases where the defendant proceeded to trial on factual guilt versus to challenge venue or test the Government's ability to prove its case after an *Alford* plea); *United States v. Smoot*, 690 F.3d 215, 224-25 (4th Cir. 2012).

[24] *See United States v. Sam*, 467 F.3d 857, 863-64 (5th Cir. 2006) (explaining that challenging the sufficiency of the evidence on appeal "is difficult to reconcile" with "a sentencing reduction for acceptance of responsibility"); *United States v. Thompson*, 582 F. App'x 433, 435 (5th Cir. 2014) (unpublished) (observing that a sufficiency of the evidence claim undermines a claim that the defendant accepted responsibility).