Case No._____

IN THE
SUPREME COURT OF THE UNITED STATES

RUFUS DENNIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Appellee.

APPLICATION FOR EXTENSION OF TIME TO FILE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. Attn: JUSTICE BRETT KAVANAUGH

Rufus E. Dennis, pro se
4315 Corby St.
Omaha, NE 68111

APPLICATION FOR EXTENSION OF TIME TO FIEE WRIT OF CERTIORARI

Comes now Petitioner, Rufus Dennis, pro se, asking Justice Brett Kavanaugh to grant the Petitioner 60 days extension of time to file his Writ of Certiorari.

Jurisdiction

On August 24, 2023, the Eighth Circuit affirmed Dennis's conviction but vacated Dennis entire sentence and remanded for resentencing. United States v. Dennis, 2023 U.S. App. Lexis 22298; No. 22-1759. See Also Attached Appx. A. Petitioner believes this Court has jurisdiction, that the conviction is final under 28 U.S.C. §1254.

Good Cause

Mr. Dennis presents that his preparation to file his writ of Certiorary, was unexpectedly interrupted when a writ was issued for his return for sentencing. His scheduled sentencing date is December 5, 2023. Currently he is without any of his legal files, as of 11/2/23 Petitioner is still in transfer. Out of necessity, Dennis is proceeding pro se. He has obtained help with the preperation of the Writ of Certiorari from another prisoner at FCI Pekin. That prisoner has been slowed not only due to the lack of having a complete file, but also due to prison operations. However, there is an arguable issue of split among the Circuits about what it takes to satisfy the elements of attempt and intertwined with that issue are rulings that conflict with this Court's decision in United States v. Taylor,142

S.Ct. 2015 (2022).

But Because were in two different facilities and is having to communicate through third parties, its not believed that the petition can be completed in time; mailed to the third party; then mailed to me; and after inspection mailed to this Court by November 22.

Dennis therefore asks the Honorable Brett Kavanaugh to grant petitioner 60 days extension of time for the good cause shown to file his Writ of Certiorari.

Mr. Dennis, prays that the Court grant him his request.

CERTIFICATE OF SERVICE

Its declared that this motion was deposited in the internal prison legal mail system on this 13th Day of November with first class postage prepaid. To:

Solicitor General
Rm. 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

/s/ Rufus Dennis 11/13/23
Rufus Dennis Date

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APPENDIX TO APPLICATION FOR EXTENSION OF TIME TO FILE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. Attn: JUSTICE BRETT KAVANAUGH

From: Rufus Dennis, pro se
4315 Corby St.
Omha, Ne. 68111

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UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
2023 U.S. App. LEXIS 22298
No. 22-1759
May 11, 2023, Submitted
August 24, 2023, Filed

Editorial Information: Prior History

{2023 U.S. App. LEXIS 1}Appeal from United States District Court for the District of Nebraska - Omaha.

Counsel For United States of America, Plaintiff - Appellee: Donald James Kleine, Lesley A. Woods, Assistant U.S. Attorney, U.S. ATTORNEY'S OFFICE, Omaha, NE.
Rufus E. **Dennis**, Defendant - Appellant, Pro se, Pekin, IL.
For **Rufus** E. **Dennis**, Defendant - Appellant: Joseph Kuehl, LEFLER & KUEHL, Omaha, NE.

Judges: Before SHEPHERD, STRAS, and KOBES, Circuit Judges.

CASE SUMMARY The jury could have reasonably found that defendant crossed the shadowy line to attempt under 18 U.S.C.S. § 1951(a) where defendant repeatedly surveilled the home and practiced his disguise as a gas company employee, even tried on a work vest and rehearsed what he would say to enter the house.

OVERVIEW: HOLDINGS: [1]-The jury could have reasonably found that defendant crossed the shadowy line to attempt under 18 U.S.C.S. § 1951(a) where defendant repeatedly surveilled the home and practiced his disguise as a gas company employee, even tried on a work vest and rehearsed what he would say to enter the house; [2]-Attempted Hobbs Act robbery did not satisfy the elements clause of 18 U.S.C.S. § 924(c). This meant that defendant's attempted Hobbs Act robbery conviction no longer qualified as a predicate crime of violence for his 18 U.S.C.S. § 924(c) conviction.

OUTCOME: Defendant's convictions affirmed in part, vacated in part; sentence vacated and remanded.

LexisNexis Headnotes

Criminal Law & Procedure > Trials > Motions for Acquittal
Evidence > Procedural Considerations > Weight & Sufficiency
Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review > Sufficiency of Evidence to Convict

The appellate court reviews de novo the denial of a motion for acquittal based on the sufficiency of the evidence, and views the evidence in the light most favorable to the guilty verdict.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Hobbs Act > Elements
Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Attempt > Elements

The Hobbs Act prohibits attempted robbery that affects commerce. 18 U.S.C.S. § 1951(a). To be

Exh A

convicted of an attempt crime, the defendant must take a substantial step toward committing the crime.

Criminal Law & Procedure > Criminal Offenses > Racketeering > Hobbs Act > Elements
Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Under the Hobbs Act, attempting to rob a drug dealer of drugs or drug proceeds satisfies the commerce requirement because the robber attempts to affect commerce over which the United States has jurisdiction. But where the target of a robbery is a drug dealer, proof that the defendant's conduct in and of itself affected commerce is not needed.

Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Attempt > Elements

Attempt requires a substantial step, which must be more than mere preparation but may be less than the last act necessary to commit the crime.

Evidence > Procedural Considerations > Burdens of Proof > Proof Beyond Reasonable Doubt
Criminal Law & Procedure > Appeals > Standards of Review

The appellate court will affirm the jury's verdict if, taking all facts in the light most favorable to the verdict, a reasonable juror could have found the defendant guilty of the charged conduct beyond a reasonable doubt.

Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Attempt > Penalties

Under U.S. Sentencing Guidelines Manual § 2X1.1(b)(1), an attempt calls for a three-level reduction unless the circumstances demonstrate that the defendant was about to complete all acts he believed necessary for successful completion of the substantive offense but for apprehension or interruption by some similar event beyond his control.

Criminal Law & Procedure > Criminal Offenses > Inchoate Crimes > Attempt > Penalties

Whether a reduction under U.S. Sentencing Guidelines Manual § 2X1.1 is warranted is a fact-specific inquiry.

Criminal Law & Procedure > Sentencing > Imposition > Factors

The appellate court has upheld the denial of a reduction even though a defendant had not reached the last step before completion of the substantive offense. A U.S. Sentencing Guidelines Manual § 2X1.1(b) ruling is one based on probabilities, which necessarily involves uncertainty.

Governments > Courts > Judicial Precedents

United States v. Taylor applies to all cases pending on direct review or not yet final as of June 21, 2022, the day the Court decided Taylor.

Criminal Law & Procedure > Sentencing > Imposition > Factors

The appellate court applies the sentencing package doctrine where the defendant, who had been charged in a multicount indictment and convicted of several crimes, successfully challenged one of those convictions based on an intervening Supreme Court case. The district court may impose a sentence on the remaining counts longer than the sentence originally imposed on those particular counts, but yielding an aggregate sentence no longer than the aggregate sentence initially imposed.

Ineffective-assistance claims are generally not decided on direct appeal unless the record has been fully developed, the failure to act would amount to a plain miscarriage of justice, or counsel's error is readily apparent.

Opinion

Opinion by: KOBES

Opinion

KOBES, Circuit Judge.

Rufus Dennis was convicted of attempted Hobbs Act robbery and three firearm charges, including possession of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c). Dennis argues that there is insufficient evidence to support his attempted Hobbs Act robbery conviction and that his § 924(c) conviction should be vacated in light of *United States v. Taylor*, 142 S. Ct. 2015, 213 L. Ed. 2d 349 (2022). He also challenges his sentence's substantive reasonableness. We affirm his attempted Hobbs Act robbery conviction but vacate his § 924(c) conviction under *Taylor*. We also vacate Dennis's sentence and remand for resentencing.

I.

A confidential informant (CI) reported that Dennis was planning a robbery. According to the CI, Dennis was targeting a stash house, where he believed a drug dealer named "Rock" lived and dealt drugs. The FBI arranged**{2023 U.S. App. LEXIS 2}** an undercover investigation.

To prepare for the robbery, the CI and Dennis made several trips to the house. During their first trip, Dennis discussed a plan where he would wear a work vest and claim that he was with the gas company. Dennis had the work vest with him, tried it on, and practiced saying, "This is Infosource . . . I need to check your meter." On another trip, Dennis and the CI observed a woman, L.B., coming and going from the house. Dennis said that he would tase L.B. if she was there when they broke in.

Dennis told the CI that he was concerned about being identified. They discussed robbing the house at night instead of during the day with a disguise. Dennis also told the CI that he was "hot" because he was on parole for murder and that he was not going back to prison; he planned to rob the stash house and leave the state.

Dennis wanted a weapon for the robbery. He had a rifle but said that he would only go through with the plan if he had something less visible. The CI introduced Dennis to his "co-worker"-an undercover FBI agent-who was looking to sell a handgun. The "co-worker" and Dennis planned to trade Dennis's rifle for the handgun. But before the trade, Dennis was arrested,**{2023 U.S. App. LEXIS 3}** and his rifle was recovered. Police later learned that the house Dennis targeted was not a stash house and that "Rock" did not live there. Rather, L.B., "Rock's" ex-girlfriend, lived there with her children.

Dennis was charged with attempted Hobbs Act robbery, 18 U.S.C. § 1951(a); being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1); possession of a stolen firearm, 18 U.S.C. §§ 922(j) and 924(a)(2); and possession of a firearm in furtherance of a crime of violence, 18 U.S.C. § 924(c)(1)(A). Before trial, Dennis moved to dismiss his attempted robbery and § 924(c) charges. The district court denied the motion but allowed Dennis to reassert it as a motion for acquittal. Dennis did,

and the district court again denied the motion. The jury then returned a guilty verdict on all four charges. At sentencing, the district court varied up and sentenced Dennis to 210 months in prison on the first three convictions and 60 months on the § 924(c) conviction, to be served consecutively.

II.

We review *de novo* the denial of a motion for acquittal based on the sufficiency of the evidence, *United States v. Druger*, 920 F.3d 567, 569 (8th Cir. 2019), and "view[] the evidence in the light most favorable to the guilty verdict," *United States v. Thompson*, 533 F.3d 964, 970 (8th Cir. 2008).

The Hobbs Act prohibits attempted robbery that affects commerce. 18 U.S.C. § 1951(a). To be convicted of an attempt crime, the defendant must take a "substantial**{2023 U.S. App. LEXIS 4}** step" toward committing the crime. *United States v. Joyce*, 693 F.2d 838, 841 (8th Cir. 1982). Dennis argues that his actions did not affect commerce and that he did not take a "substantial step" toward committing the robbery. We address each argument in turn.

Under the Hobbs Act, "attempt[ing] to rob a drug dealer of drugs or drug proceeds" satisfies the commerce requirement because the robber "attempts to affect commerce over which the United States has jurisdiction." *Taylor v. United States*, 579 U.S. 301, 303, 136 S. Ct. 2074, 195 L. Ed. 2d 456 (2016). Because the house Dennis targeted did not actually belong to a drug dealer, Dennis argues that there would have been no impact on interstate commerce if he completed the robbery. But "where the target of a robbery is a drug dealer, proof that the defendant's conduct in and of itself affected . . . commerce is not needed." *Id.* at 309. "[I]t is enough that [Dennis] *knowingly* . . . attempted to steal drugs or drug proceeds" because "the market for illegal drugs is 'commerce over which the United States has jurisdiction.'" *Id.* (emphasis added). Because the evidence established that Dennis knowingly targeted "Rock," a drug dealer, the Government satisfied the commerce element.

We now turn to whether Dennis's actions amount to attempt. Attempt requires a "substantial step," which must be**{2023 U.S. App. LEXIS 5}** more than "mere preparation" but may be less than "the last act necessary" to commit the crime. *United States v. Burks*, 135 F.3d 582, 583 (8th Cir. 1998) (citation omitted). At the time he was arrested, Dennis argues, it was still unclear whether the plan was to rob the house during the day with a disguise or at night. He also argues that the date was not set in stone and that he had not secured the handgun that was an essential part of the plan.

In *United States v. Johnson*, defendants surveilled a bank, went inside before the robbery, and bought disguises to help them in the planned robbery. 962 F.2d 1308, 1310-11 (8th Cir. 1992). There, we held that the defendants crossed the "shadowy line" from mere preparation to attempt. *Id.* at 1312. Here, Dennis repeatedly surveilled the home and practiced his disguise as a gas company employee, even trying on a work vest and rehearsing what he would say to enter the house. He recruited the CI to assist him and arranged to trade his rifle for a handgun. Viewing the evidence in the light most favorable to the verdict, we find that the jury could have reasonably found that Dennis crossed the "shadowy line" to attempt. *See United States v. St. John*, 716 F.3d 491, 493 (8th Cir. 2013) (noting that we "will affirm the jury's verdict if, taking all facts in the light most favorable to the verdict, a reasonable juror**{2023 U.S. App. LEXIS 6}** could have found the defendant guilty of the charged conduct beyond a reasonable doubt" (cleaned up)).

Dennis also argues that, given the circumstances of his attempt, the district court erred when it declined at sentencing to reduce his base offense level for attempted Hobbs Act robbery by three levels. *See* U.S.S.G. § 2X1.1(a)-(b). Under § 2X1.1(b)(1), an attempt calls for a three-level reduction unless "the circumstances demonstrate that the defendant was about to complete all [acts he believed necessary for successful completion of the substantive offense] but for apprehension or

interruption by some similar event beyond [his] control." At sentencing, the district court found that but for the police intervention, Dennis would have invaded L.B.'s home. We review this finding for clear error and find none. *See United States v. Rill*, 592 F.3d 863, 865 (8th Cir. 2010); *see also United States v. Brown*, 74 F.3d 891, 893 (8th Cir. 1996) (explaining that "whether a reduction under Section 2X1.1 is warranted is a fact-specific inquiry").

Dennis argues that he was arrested before he got his weapon of choice and before he decided when to invade L.B.'s home. He claims that without having committed these final acts, he is entitled to § 2X1.1(b)(1)'s three-level reduction. But we "have upheld the denial of a reduction even though a defendant had not reached the 'last**{2023 U.S. App. LEXIS 7}** step' before completion of the substantive offense." *Brown*, 74 F.3d at 893; *accord United States v. McGarr*, 330 F.3d 1048, 1050-51 (8th Cir. 2003) (explaining that a § 2X1.1(b) ruling is one "based on probabilities," which "necessarily involves uncertainty"). The district court had to decide whether it was "reasonably certain" that Dennis would have committed the robbery "but for some factor beyond [his] control." *United States v. Jones*, 791 F.3d 872, 874 (8th Cir. 2015) (cleaned up) (citation omitted).

Here, Dennis repeatedly surveilled L.B.'s home. He donned a disguise and scripted his false entry. He had a rifle and planned to neutralize, if necessary, those he found inside. But he preferred to wield a handgun and told his fake accomplice he wouldn't rob the house without one. Just before the trade, he was arrested. All told, the district court did not clearly err by finding the circumstances showed Dennis was about to complete all the acts he believed necessary to complete the Hobbs Act robbery but for the police's intervention.

III.

Having upheld Dennis's conviction for attempted Hobbs Act robbery, we now consider whether we should vacate his § 924(c) conviction. After Dennis's trial, the Supreme Court decided *United States v. Taylor* and held that "*attempted* Hobbs Act robbery does not satisfy the elements clause" of § 924(c). 142 S. Ct. at 2020. This means that**{2023 U.S. App. LEXIS 8}** Dennis's attempted Hobbs Act robbery conviction no longer qualifies as a predicate crime of violence for his § 924(c) conviction.1 So we vacate his § 924(c) conviction in accordance with *Taylor*.

In doing so, we apply the sentencing package doctrine and "vacate the entire sentence on all counts so that, on remand, the trial court can reconfigure the sentencing plan to ensure that it remains adequate to satisfy the sentencing factors in 18 U.S.C. § 3553(a)." *Greenlaw v. United States*, 554 U.S. 237, 253, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008); *see also United States v. McArthur*, 784 F. App'x 459, 461 (8th Cir. 2019) (per curiam) (applying the sentencing package doctrine where the defendant, who had been charged in a multicount indictment and convicted of several crimes, successfully challenged one of those convictions based on an intervening Supreme Court case). The district court may "impose[] a sentence on the remaining counts longer than the sentence originally imposed on those particular counts, but yielding an aggregate sentence no longer than the aggregate sentence initially imposed." *Greenlaw*, 554 U.S. at 253.

IV.

For the reasons above, we affirm Dennis's attempted Hobbs Act robbery conviction but vacate his § 924(c) conviction. We also affirm his convictions for being a felon in possession of a firearm and for possession of a stolen firearm.2 Finally, we vacate Dennis's entire**{2023 U.S. App. LEXIS 9}** sentence and remand for resentencing.

Footnotes

1

Taylor applies to all cases "pending on direct review or not yet final" as of June 21, 2022, the day the Court decided *Taylor*. *See Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S. Ct. 708, 93 L. Ed. 2d 649 (1987).

2

Dennis also raised an ineffective assistance of counsel claim on appeal. But the record is undeveloped on this issue, and Dennis did not raise it below, so we decline to address it on appeal. *See United States v. Ramirez-Hernandez*, 449 F.3d 824, 826-27 (8th Cir. 2006) (explaining that ineffective-assistance claims are generally not decided on direct appeal unless "the record has been fully developed," the failure to act "would amount to a plain miscarriage of justice," or "counsel's error is readily apparent").