NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 18, 2023
Decided October 5, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2070

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHRISTOPHER CRITTENDON,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 17-CR-121

Lynn Adelman,
Judge.

O R D E R

Christopher Crittendon appeals his convictions and 124-month sentence for armed bank robbery, 18 U.S.C. § 2113(a), (d), and brandishing a firearm during a crime of violence, *id.* § 924(c)(1)(A)(ii). His lawyer moves to withdraw, contending that the appeal is frivolous. See *Anders v. California*, 386 U.S. 738, 744 (1967). Although Crittendon did not respond under Circuit Rule 51(b) to counsel's motion, counsel describes several issues that Crittendon asks to raise. Because counsel carefully explains the nature of the case and appears to thoroughly address the potential appellate issues, we limit our review to counsel's discussion. *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014).

Trial testimony, forensic evidence, and video tell the story of the 2016 bank robbery in Wauwatosa, Wisconsin. Two men in black clothes and ski masks entered the bank. The first jumped over the counter and demanded cash; the second brandished a gun before jumping over the counter to collect the bills. Among the bills, the bank teller placed a GPS tracker that police used to pursue the robbers' car. When both robbers abandoned the car and fled on foot, one was promptly caught, and one was not. The captured robber, Montrell Howard, tried to discard a cell phone, but police seized it.

That cell phone was registered to Crittendon. And other circumstantial evidence suggested Crittendon was the escaped robber. During the foot chase, this robber dropped a gun, and Crittendon's DNA was found on it. His DNA also showed up on gloves in the getaway car. Meanwhile, police video of the chase showed the escaping robbers' orange shorts peeking over the top of his black pants; Marquise Williams, a local resident, alerted police to a strange man with orange shorts in a nearby yard; and in that yard, police found black pants, shoes that matched a print left on the bank counter, and a gold tooth grill that bore Crittendon's DNA and appeared in a photo of Crittendon retrieved from the discarded cell phone. The man was already gone, though.

Two weeks after the robbery, Williams reviewed a photo array and picked Crittendon as the man from the yard. Three wrinkles arose, though: (1) police officers testified that they showed Williams no photos beforehand, but Williams testified that they also showed him photos on the day of the robbery (and at least one other time before the array), including one of Crittendon; (2) Williams testified that he saw the man undressing, yet police said Williams reported seeing only the man and not the act of undressing; and (3) Williams wavered about who was with him that day.

Eventually Crittendon was arrested, released on bond, and then rearrested for tampering with a court-ordered monitoring device and violating other bond conditions. Defense counsel initially voiced concerns about Crittendon's competence, but after a psychological evaluation, the parties agreed that he could understand the proceedings and assist counsel, and that there remained no bona fide reason to doubt his fitness.

As trial approached, the government made several unopposed motions in limine and the parties entered joint stipulations, which covered facts about the underlying robbery that defense counsel saw no grounds to dispute, as well as routine prerequisites to admitting exhibits (such as chain of custody and authenticity). At the two-day trial, the parties first agreed to use this court's pattern jury instructions and then agreed to minor changes proposed by the judge.

After conviction, Crittendon moved for acquittal under Federal Rule of Criminal Procedure 29, contesting the sufficiency of the circumstantial evidence and specifically challenging Williams's credibility. The district court denied this motion.

Next, the probation office prepared a presentence report. The total offense level of 22 and Crittendon's 8 criminal history points (which placed him in category IV) yielded a guidelines range of 63 to 78 months for the robbery. The § 924(c) offense carried a consecutive 84-month mandatory minimum and led to a combined guidelines range of 147 to 162 months. Neither party objected to the report.

At the sentencing hearing, Crittendon's counsel argued in mitigation that Crittendon had helped streamline the process through evidentiary stipulations, established a prior work history despite some drug problems, and struggled with his bond conditions in part because of the strain of the COVID-19 pandemic. The government, on the other hand, stressed the dangerousness of the robbery, the lack of respect for law reflected in the bond violations, and Crittendon's state-court prosecutions for other gun offenses. After discussing these arguments, the district court selected 124 months' imprisonment (nearly 2 years below the low point of the guidelines range) and 3 years' supervised release.

Now, in seeking to withdraw from Crittendon's appeal of that judgment, counsel starts by assessing pretrial issues: Crittendon's competence; the government's motions in limine; and the parties' joint stipulations. We agree that any challenge on these points would be frivolous. Crittendon did not object, so review is limited to plain error. *United States v. Tucker*, 714 F.3d 1006, 1011–12 (7th Cir. 2013). And neither we nor counsel can discern any basis for claiming error in the judge's handling of these issues.

Counsel then considers the denial of the motion for acquittal, but rightly rejects as frivolous any argument on that front. Viewed in the light most favorable to the prosecution, the evidence permitted rational jurors to find, beyond a reasonable doubt, that Crittendon committed each element of armed bank robbery. See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (outlining sufficiency-of-evidence test). Armed bank robbery means (1) taking property (2) belonging to a bank or FDIC-insured institution (3) from the person or presence of another (4) by violence or intimidation (5) with a dangerous weapon. See 18 U.S.C. § 2113(a), (f). Here, there was ample testimony and video evidence that the robbers took currency from the bank and that one brandished a gun at bank staff. The parties stipulated that the bank was FDIC-insured. The question at trial

was whether Crittendon was the escaped robber. But as counsel notes, the circumstantial evidence was strong: DNA and documentary evidence tied Crittendon to the gun and phone abandoned in the chase, as well as property in the getaway car; and regardless of the strength of Williams's identification, DNA testing on the tooth grill pointed to Crittendon as the man in orange shorts (the same color as the second robber's) who abandoned his clothes near the chase site.

Any sufficiency-of-the-evidence challenge to the § 924(c) conviction would be similarly frivolous. Bank security video shows the brandishing of a gun; there is no reason to doubt that the brandishing was intentional and part of the robbers' plan; and bank robbery is a predicate crime of violence for a § 924(c) firearm count under *United States v. Williams*, 864 F.3d 826, 830 (7th Cir. 2017). Counsel says Crittendon wants her to argue that only the robber who personally handles the gun can be convicted for this offense. But regardless of whether Crittendon was the robber holding the gun (as he may well have been), he could be held accountable as a knowing accomplice in Howard's use of a gun. See *United States v. Thomas*, 933 F.3d 685, 695 (7th Cir. 2019).

Next, counsel turns to three issues that Crittendon asks her to raise. We see no reason to question counsel's assessment that they would be frivolous. First, Crittendon wants to challenge Williams's credibility. But we cannot disturb a jury's credibility determination unless the testimony described physically impossible events—a rare occurrence. *United States v. Nieto*, 29 F.4th 859, 868 (7th Cir. 2022). Though Williams wavered on certain points, his account is not impossible (or even implausible).

Second, Crittendon asks counsel to identify a challenge to the jury instructions. But because the parties stipulated to an initial set and then agreed to the judge's minor changes, any challenge would be waived, see *United States v. LeBeau*, 949 F.3d 334, 341 (7th Cir. 2020), or at least forfeited and thus reviewed only for plain error, see *Tucker*, 714 F.3d at 1011. Counsel is unable to detect a specific potential challenge to the jury instructions, and we are aware of none.

Third, Crittendon tells counsel he wants to challenge some aspect of the footprint evidence. But he did not contest the admission of this evidence at trial, so again review would be limited to plain error—and counsel sees no arguable grounds to exclude this evidence, plain or otherwise. See *United States v. Smith*, 697 F.3d 625, 634 (7th Cir. 2012) (permitting testimony of expert footprint analyst).

Counsel also determines, rightly, that the sentencing hearing was free from any obvious defect affecting substantial rights. See *United States v. Oliver*, 873 F.3d 601, 607 (7th Cir. 2017). Counsel cannot identify, and we do not see, any reason to doubt the overall guidelines-range calculation of 147 to 162 months. Nor can we discern any challenge to the reasonableness of Crittendon's 124-month sentence, which is 23 months below the guidelines range. We have never found a below-guidelines sentence to be unreasonably high, *United States v. Oregon,* 58 F.4th 298, 302 (7th Cir. 2023), and we have no reason to think this case should be the first. The district court adequately considered Crittendon's mitigating arguments about his substance abuse and mental health issues, work history, and lack of long prior sentences; and it weighed these considerations against the seriousness of the robbery and Crittendon's disregard for legal restrictions. See 18 U.S.C. § 3553(a); *United States v. Sunmola*, 887 F.3d 830, 841 (7th Cir. 2018). Last, the district court adequately justified the three-year term of supervised release, which falls within the statutory range. See 18 U.S.C. § 3583(b)(1); *United States v. Bloch*, 825 F.3d 862, 869 (7th Cir. 2016).

Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.