

NONPRECEDENTIAL DISPOSITION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**

Argued December 12, 2023

Decided February 29, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-3022

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

AHMEESHADYE CURTIS,
Defendant-Appellant.

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

No. 3:20CR00074-JDP-002

James D. Peterson,
Chief Judge.

ORDER

Ahmeeshadye Curtis was convicted by a jury of conspiracy to transport, and transporting, stolen goods across state lines. *See* 18 U.S.C. §§ 371, 2314. The district court sentenced him to 42 months' imprisonment and ordered restitution. On appeal, Curtis challenges both the sufficiency of the evidence to sustain his convictions and a clerical error in the judgment pertaining to restitution. We affirm the judgment but modify it to correct the clerical error.

Background

Over a one-month period in 2019, eight retail stores in Wisconsin, Iowa, Ohio, and Minnesota experienced early morning break-ins. Surveillance videos from each store showed two men with ski masks and gloves stealing electronics and other goods.¹

The first burglar identified was Carl Carter. He was arrested minutes after the final burglary in Wauwatosa, Wisconsin, with recently stolen goods in his vehicle. In the vehicle, officers found other items, including burglary tools (bolt cutters, a pry bar, and a hammer), clothing consistent with those seen in the videos of the previous burglaries, and a list of addresses of stores in Iowa, including one burglarized ten days earlier. Officers also recovered two cellphones running police-scanner applications.

Officers then obtained video (from a doorbell camera) of the arrest scene from the final burglary. The video shows—moments before the officers' arrival—a second man bolting from Carter's vehicle. The officers traced the route taken by the second man and found a discarded duffel bag containing the rest of the stolen goods.

Officers later identified the second man as Ahmeeshadye Curtis, the defendant here. One important piece of evidence was a surveillance video from a Walgreens (identified by a receipt in Carter's vehicle) that showed both men entering the store and making a purchase a few hours before the final burglary. Officers also connected Curtis to other items in the vehicle—his fingerprint on a water bottle and his DNA on two ski masks and a glove.

The two cellphones found in Carter's vehicle also connected Curtis to the spree. The first phone, an iPhone 6s Plus, was linked to Carter's Facebook account and contained photos of items like those stolen during the thefts, as well as photos of Curtis donning jewelry and Nike sneakers like those recovered from his vehicle. The second phone, an iPhone 11 named "Rick's iPhone," contained information that, along with cellphone-tower data, allowed police to trace the phone to Curtis. Cellphone-tower data established that the two phones traveled together to and from seven of the eight burglarized stores around the time of each of the burglaries, often crossing state lines.

¹ The eight stores were a Sam's Club in Janesville, WI (Nov. 28); a U.S. Cellular store in Janesville, WI (Nov. 28); a U.S. Cellular store in Creston, IA (Dec. 3); a Target in Cuyahoga Falls, OH (Dec. 4); a Target in Cedar Falls, IA (Dec. 14); a Target in Minnetonka, MN (Dec. 17); an Xfinity store in Woodbury, MN (Dec. 17); and a U.S. Cellular store in Wauwatosa, WI (Dec. 24).

Curtis was arrested and charged in a two-count indictment for conspiring to transport stolen goods across state lines in violation of 18 U.S.C. § 371 and transporting stolen goods across state lines in violation of 18 U.S.C. § 2314. Count 2 related only to the burglary of an Xfinity store in Woodbury, Minnesota, and alleged that Curtis then transported the stolen goods from Minnesota to Wisconsin.

After a three-day jury trial, the government rested its case, and Curtis moved for acquittal under Rule 29 of the Federal Rules of Criminal Procedure. Curtis argued that there was insufficient evidence for a jury to find him guilty beyond a reasonable doubt. Curtis argued first that no jury could infer from the evidence that he possessed the iPhone 11 the government used to connect him to the burglaries, and second that “the interstate nexus [had] not been met” because there was no testimony about “where [the] stolen property ended up.”

The district court denied Curtis’s motion. First, the court determined that there was sufficient evidence for a jury to infer that Curtis possessed the iPhone 11, and this evidence—along with the videos of the burglaries and the DNA evidence—could enable a jury to determine that he participated in the burglaries. Second, the court determined that the “prompt cell phone tracking into Wisconsin” after the burglary of the Xfinity store in Minnesota was sufficient to infer interstate transportation of stolen goods.

The jury returned a guilty verdict on both counts. The court sentenced Curtis to 42 months in prison for each count, to run concurrently. The court also ordered Curtis to pay a total of \$133,668.67 in restitution, jointly and severally with Carter, to the eight retail stores that the men burglarized.

Analysis

On appeal, Curtis challenges the sufficiency of the evidence. In doing so, he faces what we frequently have called a “nearly insurmountable” hurdle. *See, e.g., United States v. Farmer*, 38 F.4th 591, 602 (7th Cir. 2022). We assess the sufficiency of the evidence “in the light most favorable to the government and will overturn a conviction only if the record contains no evidence from which a reasonable juror could have found the defendant guilty.” *United States v. Longstreet*, 567 F.3d 911, 918 (7th Cir. 2009). Thus, if “any rational jury could have returned a guilty verdict, the verdict must stand.” *United States v. Jones*, 222 F.3d 349, 352 (7th Cir. 2000).

Curtis raises similar sufficiency arguments for each count of the indictment. He contends that the evidence of his presence at the burglaries was insufficient to sustain either conviction. He argues in the alternative that even if there was sufficient evidence of his presence at the burglaries, his mere presence was insufficient to demonstrate agreement to the conspiracy for Count 1 or actual transportation of stolen goods across state lines for Count 2. Curtis also points out a clerical error in the judgment related to the court-ordered restitution. We address each argument in turn.

A. Sufficiency of the Evidence

1. Count 1: Conspiring to transport stolen goods across state lines

Curtis appeals his conviction for conspiring to transport stolen goods across state lines in violation of 18 U.S.C. § 371. This statute requires the government to establish that the defendant entered into an agreement with one or more person to “commit any offense against the United States, or to defraud the United States, or any agency thereof.” The government, then, needed to prove that Curtis (1) entered into an agreement to commit an offense against the United States; (2) took an overt act in furtherance of that conspiracy; and (3) had knowledge of the conspiratorial purpose. *See United States v. Foy*, 50 F.4th 616, 624 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 2660 (2023).

Curtis makes a two-pronged argument why the evidence was insufficient for the jury to convict him of conspiracy. He first argues that there was insufficient evidence to establish his presence at the burglaries, given the government’s failure to present corroborating video or photographic evidence, physical evidence tying him to the burglaries, or witness testimony placing him at the burglaries. According to Curtis, the government presented only circumstantial evidence of his guilt, which required the jury to infer that he possessed the iPhone 11 and was one of the burglars in the videos. And based on the evidence, Curtis says, no reasonable jury could make either inference.

Here, each link in the “chain of inferences” was strong enough for the jury to conclude that Curtis was present at the burglaries. *United States v. Moore*, 572 F.3d 334, 337 (7th Cir. 2009) (internal quotations omitted). First, the government introduced ample evidence that Curtis possessed the recovered iPhone 11. The phone was linked to an Apple ID account—*cartierglas608@gmail.com*—used by Curtis to arrange travel, and cellphone-tower data showed that the phone’s location was consistent with multiple interstate flights that Curtis took during the timeframe of the burglaries. Further strengthening the connection between Curtis and the iPhone 11’s Apple ID account,

emails to cartierglas608@gmail.com were addressed to “Ahmeeshadye Curtis.” And this email address was also connected to a Google account that had been used to view the location of multiple stores that had been burglarized. Finally, fewer than three months after Carter’s arrest, law enforcement seized another of Curtis’s phones—one that was linked to the same Apple ID account as the iPhone 11 recovered from Carter’s vehicle.

Second, the government introduced cellphone-tower evidence showing that the iPhone 11’s (and thus Curtis’s) location was consistent with seven of the eight burglaries. The cellphone-tower evidence revealed that Curtis’s iPhone 11 and Carter’s iPhone 6s moved consistently with each other to and from the locations of all but one of the burglaries. The government bolstered this evidence with testimony from two police officers who encountered Curtis near a U.S. Cellular store in Roscoe, Illinois, in December 2019, between the Woodbury and Wauwatosa burglaries. Both officers testified that Curtis and Carter were sitting in a parked car with the vehicle’s lights off and license plates covered. Although that store was not burglarized, the officers, who allowed the men to leave, saw bolt cutters in the vehicle and later identified Curtis as the vehicle’s passenger. And cellphone-tower data showed that the iPhone 11 pinged off a nearby tower consistent with Curtis’s location in Illinois during this encounter, supporting the inference that Curtis possessed the cellphone and therefore was present at the burglaries.

Third, the jury could have inferred from the DNA evidence on the glove and ski masks recovered from Carter’s vehicle that Curtis was present at the burglaries. This evidence suggested that Carter possessed the items like those worn by the second burglar. True, the burglar’s face was concealed by a ski mask in the videos, but the jury could compare the decals on the glove with Curtis’s DNA to those worn by the burglar. Curtis counters that the iPhone 11 could have been possessed by someone else and that the gloves and ski masks were innocuous winter garments, but our deferential standard of review after a jury verdict renders such “plausible, innocent explanations . . . of little moment.” *United States v. Duarte*, 950 F.2d 1255, 1260 (7th Cir. 1991).

Curtis’s second challenge to the sufficiency of the evidence is that, even if the jury could infer his presence at the burglaries, no reasonable jury could conclude that he knowingly entered a conspiracy to transport stolen goods across state lines. Curtis contends that his presence at the burglaries alone does not establish an agreement to conspire; the government instead needed to prove that he actively engaged in the burglaries as a willing participant or agreed with Carter before or during the burglaries

to transport stolen goods across state lines. In his view, the government failed to produce a single piece of evidence of such an agreement.

This argument is unpersuasive. Even without evidence of a spoken agreement, video evidence of individuals taking cooperative steps to further a conspiracy is sufficient evidence for a jury to infer a tacit agreement between the individuals. *Foy*, 50 F.4th at 625. Here, the government introduced video evidence from which a jury could infer at least a tacit agreement between Curtis and Carter to commit the burglaries by taking cooperative steps to burglarize the retail stores. The government also introduced evidence that Curtis knew of the interstate nature of the conspiracy: cellphone-tower data showing that he and Carter traveled across state lines before and after seven of the eight burglaries; photos taken by Carter's phone in Wisconsin of items like those stolen the previous day during a burglary in Iowa; and evidence that Carter's phone had searched a navigation route to Chicago from the U.S. Cellular store in Wisconsin before the burglary. Although presence alone is insufficient to infer a conspiracy, a jury may rely on common sense to infer that criminals are unlikely to bring innocent nonparticipants along for the ride as witnesses to their crimes. *See United States v. Gilmer*, 534 F.3d 696, 702–04 (7th Cir. 2008). Based on the evidence, the jury could have inferred that Curtis was not simply “along for the ride” to and from each burglary. *See id.* at 703–04.

2. Count 2: Transporting stolen goods across state lines

Curtis also makes two sufficiency-of-the-evidence challenges to his conviction under 18 U.S.C. § 2314 for transporting stolen goods across state lines. A person who knowingly transports, in interstate commerce, stolen goods worth over \$5,000 is guilty under 18 U.S.C. § 2314. First, he argues that the evidence was not sufficient for a reasonable jury to infer that he was present at the burglary of the Xfinity store in Woodbury, Minnesota, which occurred one week before the Wauwatosa burglary and Carter's arrest.

But here the government introduced ample evidence of Curtis's presence. As with the other burglaries, the government introduced video evidence that showed a larger man, wearing a ski mask and gloves, alongside Carter. The government also introduced cellphone-tower data showing that Curtis's phone moved from Wisconsin, to Minnesota, and back to Wisconsin before and immediately after the Xfinity burglary.

Indeed, the cellphone-tower data showed that Curtis's iPhone 11 pinged off cellphone towers near the Xfinity store in Woodbury during the time of the burglary.

Curtis's second, alternative argument is that, even if a reasonable jury could infer his presence at that burglary, there was insufficient evidence for a jury to find that he knowingly transported the stolen goods in interstate commerce. But this argument fares no better because the government presented cellphone-tower data showing that the iPhone 11 (and Curtis) traveled directly from Minnesota into Wisconsin mere minutes after the Xfinity burglary.

B. Restitution Order

Curtis also argues that there is a clerical error in the judgment. The district court's judgment required Curtis and Carter to pay restitution to each of the eight stores that they burglarized, but Curtis asserts that the written judgment incorrectly assigns the restitution to Count 2 (which was limited to the burglary victims in Woodbury) instead of Count 1 (which included the victims in the remaining burglaries). The government concedes that the error is clerical and urges us to correct the misattribution.

The discrepancy in the judgment is a clerical error, correctable at any time under Rule 36 of the Federal Rules of Criminal Procedure. *See* FED. R. CRIM. P. 36 ("After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment"); *United States v. Anobah*, 734 F.3d 733, 739–40 (7th Cir. 2013). Notice was adequate here; both parties agree that Curtis's restitution obligation arises from Count 1 rather than Count 2. We order the clerk of the district court to amend the written judgment to assign the restitution to Count 1. *See Anobah*, 734 F.3d at 740.

With that correction to the judgment, we AFFIRM.