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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. DAVID JAH, Sr., Defendant-Appellant.	No. 21-10213 D.C. No. 3:19-cr-00026-WHA-1 MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Submitted November 14, 2022[**]
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and MOSKOWITZ,[***] District Judge.

David Jah, Sr., appeals his conviction for conspiracy to commit arson, in violation of 18 U.S.C. §§ 844(i) and (n). Jah challenges the sufficiency of the

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

evidence on the interstate commerce element of arson and the district court's answer to the jury's question on that element. We have jurisdiction under 28 U.S.C. § 1291, and we affirm. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

"We review de novo the sufficiency of the evidence." *United States v. Backman*, 817 F.3d 662, 665 (9th Cir. 2016). We must reject a sufficiency challenge if, when viewing the trial evidence "in the light most favorable to the prosecution," a trier of fact could rationally vote to convict based on the evidence. *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc) (citation omitted); *accord United States v. Powell*, 469 U.S. 57, 67 (1984) ("Sufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilt beyond a reasonable doubt."). Jah's sufficiency-of-the-evidence challenge lacks merit.

The trial evidence established that Jah hired two people to firebomb a home in which a lawyer had a room in which he conducted his law practice. The interstate commerce element can be satisfied with evidence that a law practice is maintained in a home. *See Jones v. United States*, 529 U.S. 848, 859 (2000) (holding that Section 844(i) applies to "property currently used in commerce or in an activity affecting commerce"); *Russell v. United States*, 471 U.S. 858, 862 (1985) (holding that rental apartment satisfied interstate commerce element); *Harrison v. Ollison*,

519 F.3d 952, 961 (9th Cir. 2008) (explaining that stipulation that van was used in commercial business "would be sufficient to bring the property within the scope of § 844(i) under *Jones*"); *United States v. Gomez*, 87 F.3d 1093, 1096 (9th Cir. 1996) (explaining that interstate commerce element covers properties "commercial or economic in nature"); *see also United States v. Doggart*, 947 F.3d 879, 885 (6th Cir. 2020) (indicating that "a private residence that is also used as the primary office of a lawyer" would satisfy interstate commerce element); *Martin v. United States*, 333 F.3d 819, 821 (7th Cir. 2003) ("It remains true after *Jones* that buildings actively used for a commercial purpose, including restaurants, *home offices*, church daycare centers, and temporarily vacant rental properties, all possess the requisite nexus with interstate commerce under § 844(i)." (citations omitted and emphasis added)).

"We review de novo whether the district court's response to a jury question correctly states the law." *United States v. Castillo-Mendez*, 868 F.3d 830, 835 (9th Cir. 2017). Jah's challenge to the district court's response to the jury's question also fails. While it was deliberating, the jury sent a note asking: "In order to prove the [interstate commerce] element, does the building need to be used in a commercial use *and* interstate commerce *or* does the building only need to be used for a commercial purpose." The district court circled the second part of the question — that is, the part asking "does the building only need to be used for a commercial purpose" — and wrote: "This would be sufficient to prove the [interstate commerce]

element."

The district court's answer is consistent with *Jones*. 529 U.S. at 850–51 (ruling that "residence not used for any *commercial purpose*" did not satisfy interstate commerce element (emphasis added)); *United States v. Cortes*, 299 F.3d 1030, 1034 (9th Cir. 2002) (explaining that *Jones* "interpreted the [interstate commerce] element to encompass only property actively employed for *commercial purposes*" (emphasis added)); *see also United States v. Aljabari*, 626 F.3d 940, 948 (7th Cir. 2010) (explaining that "[t]he Supreme Court has construed the federal arson statute to protect buildings actively used for a *commercial purpose*" (emphasis added)). Moreover, this Court has already rejected the very challenge Jah is now raising. *See Gomez*, 87 F.3d at 1097 (finding "no error with" jury instruction providing that "[a] building is used in interstate commerce, or any activity affecting interstate commerce, if the building itself is used for a business or *commercial purpose*" (emphasis added)).

Jah's additional filings (Docket Nos. 63, 64, 68, 69, & 77) were submitted by him personally when he is represented by counsel. The Court strikes those filings as not submitted by counsel. *See* 9th Cir. R. 25-2; Fed. R. App. P. 32; *see also United States v. Cross*, 959 F.3d 847, 853 (7th Cir. 2020) ("A defendant does not have a right to represent himself when he is also represented by counsel.").

AFFIRMED.