

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

United States v. Bobby Kobito

No. No. 19-4560, United States Court of Appeals for the Fourth Circuit (April 21, 2021)

SUMMARY

The Fourth Circuit affirmed a 60-month sentence for possessing an unregistered silencer, holding that the terrorism enhancement under USSG §3A1.4 applies when a felony is "intended to promote" a federal crime of terrorism, regardless of whether the defendant could be convicted of that crime. The court found no clear error in the district court's determination that Kobito possessed the silencer with intent to promote destruction of federal property to influence government conduct. Any error in applying the §2K2.1(b)(6)(B) enhancement for possessing a firearm in connection with another felony was harmless because it did not affect the Guidelines range, which was capped by the statutory maximum. The case clarifies that the "intended to promote" prong of §3A1.4 focuses on the defendant's purpose, not completion or conviction of the underlying terrorism offense.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Diaz; Gregory; King
JURISDICTION	Federal
DECIDED	April 21, 2021
DOCKET	No. 19-4560
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from sentence imposed after guilty plea for knowingly possessing an unregistered silencer.
STANDARD OF REVIEW	For challenges to Guidelines calculations: legal conclusions de novo, factual findings for clear error, unpreserved arguments for plain error, preserved arguments for harmless error. Overall sentence reviewed for reasonableness.
PRECEDENTIAL VALUE	Published
PARTIES	Bobby John Kobito v. United States of America

TOPICS

- sentencing
- criminal procedure
- standard of review
- harmless error
- statutory interpretation

PRACTICE AREAS

Criminal Law

Sentencing

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in applying USSG § 3A1.4 (felony intended to promote terrorism) when the government did not prove the building was within special territorial jurisdiction and Kobito's conduct was not an attempt or conspiracy.
2. Whether the district court erred in applying USSG § 2K2.1(b)(6)(B) (possession of firearm in connection with another felony) when Kobito could not be convicted of the predicate felony.

HOLDINGS

1. No. The enhancement applies whenever the defendant's offense of conviction or relevant conduct was intended to promote a federal crime of terrorism, regardless of whether the defendant could be convicted of such a crime.
2. Any error in applying the § 2K2.1(b)(6)(B) enhancement is harmless because removing it does not change the Guidelines range, which remains capped by the statutory maximum.

KEY QUOTATIONS

"The dictionary defines 'intend' as 'to have in mind as a purpose or goal.' And it defines 'promote' as 'to help bring (something, such as an enterprise) into being.' Put together, the ordinary meaning of the 'intended to promote' prong is that the enhancement applies whenever the defendant commits a felony with 'a goal or purpose . . . to bring or help bring into being a crime listed in 18 U.S.C. § 2332b(g)(5)(B),' even if the defendant 'has not necessarily completed, attempted, or conspired to commit the crime.'" (at 9-10)

"it is the defendant's purpose that is relevant, and if that purpose is to promote a terrorism crime, the enhancement is triggered." (at 10)

"any error in the application of the enhancement is harmless." (at 13)

FACTUAL BACKGROUND

Kobito entered a mosque and drew police attention. An FBI confidential informant contacted Kobito, who proposed targeting the Terry Sanford Federal Building in Raleigh. Kobito described sniper positions, discussed using homemade silencers, and sent a manifesto. He later withdrew from the plan but still possessed the silencers. A search of his home uncovered two oil-filter silencers.

PROCEDURAL HISTORY

Kobito pleaded guilty to violating 26 U.S.C. §§ 5861(d) and 5871. The district court applied enhancements under USSG § 3A1.4 and § 2K2.1(b)(6)(B), resulting in a Guidelines range of 188-235 months, capped at 120 months. The court varied downward and sentenced Kobito to 60 months. He appealed, challenging the enhancements.

DISPOSITION

affirmed

CASES CITED

- Gall v. United States, 552 U.S. 38 (2007)
- United States v. Strieper, 666 F.3d 288 (4th Cir. 2012)
- United States v. Lynn, 592 F.3d 572 (4th Cir. 2010)
- United States v. Steffen, 741 F.3d 411 (4th Cir. 2013)
- United States v. Ward, 972 F.3d 364 (4th Cir. 2020)
- Loughrin v. United States, 573 U.S. 351 (2014)
- United States v. Awan, 607 F.3d 306 (2d Cir. 2010)
- United States v. Chandia, 675 F.3d 329 (4th Cir. 2012)
- United States v. Hammoud, 483 F. App'x 865 (4th Cir. 2012)
- United States v. Mandhai, 375 F.3d 1243 (11th Cir. 2004)
- United States v. Graham, 275 F.3d 490 (6th Cir. 2001)
- United States v. Benkahla, 530 F.3d 300 (4th Cir. 2008)
- United States v. Fidse, 862 F.3d 516 (5th Cir. 2017)
- United States v. Arnaout, 431 F.3d 994 (7th Cir. 2005)
- United States v. Hargrove, 701 F.3d 156 (4th Cir. 2012)
- United States v. Ward, 171 F.3d 188 (4th Cir. 1999)