

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK R. DAVIS,

Defendant.

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CRIMINAL ACTION

No. 11-20020-02-CM

MEMORANDUM AND ORDER

This matter comes before the Court on defendant's Motion For Judgment Of Acquittal On Count 20 (Hobbs Act Violation) (Doc. #149) filed November 26, 2012. Defendant seeks acquittal on Count 20 because the government did not establish the interstate commerce requirement for a Hobbs Act violation. Defendant contends that under United States v. Morrison, 529 U.S. 598 (2000), the government must show more than a potential de minimis effect on interstate commerce. Defendant does not dispute, however, that the government satisfied the interstate commerce requirement under current Tenth Circuit law. The Tenth Circuit has held that the government is only required to present evidence of a potential de minimis effect on interstate commerce to establish a Hobbs Act violation. See United States v. Toles, 297 F.3d 959, 969 (10th Cir. 2002); United States v. Malone, 222 F.3d 1286, 1294-95 (10th Cir. 2000). Because the government presented sufficient evidence to establish a potential de minimis effect on interstate commerce by the robbery of the Radio Shack store, the Court overrules defendant's motion for judgment of acquittal on this count.

IT IS THEREFORE ORDERED that defendant's Motion For Judgment Of Acquittal On Count 20 (Hobbs Act Violation) (Doc. #149) filed November 26, 2012 be and hereby is **OVERRULED**.

Dated this 20th day of December, 2012 at Kansas City, Kansas.

s/ Carlos Murguia
Carlos Murguia
United States District Judge