

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11477
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KYLE S. HINDERER,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:24-cr-20467-DMM-1

Before ROSENBAUM, GRANT, and TJOFLAT, Circuit Judges.

PER CURIAM:

Kyle Hinderer appeals his 51-month sentence for transmitting a threat through interstate commerce in violation of 18 U.S.C.

§ 875(c).¹ Hinderer challenges the District Court’s application of the enhancement provided under U.S.S.G. § 2A6.1(b)(1), which provides for a six-level enhancement “[i]f the offense involved any conduct evidencing an intent to carry out such threat.” After careful review, we affirm Hinderer’s sentence.

I.

Following his mother’s death on December 30, 2023, Hinderer threatened to kill three of his family members² and anyone else that attended his mother’s funeral, which was scheduled to occur in Connecticut on January 6, 2024. Between December 31, 2023, and January 3, 2024, Hinderer sent a series of texts to his brother³ which included the following statements.

- “I will burn that whole goddamn place down and I will shoot everybody on the way out.”
- “I’m killing [Victim l’s] kids right in frontt [sic] of her.”
- “[AK]47s and all the whole town is going up.”

¹ This statute in full reads as follows: “Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.” 18 U.S.C. § 875(c).

² These family members are identified in the Indictment as “Victim 1,” “Victim 2,” and “Victim 4.” There is no “Victim 3” identified in the Indictment.

³ The Indictment refers to Hinderer’s brother as “J.F.” This individual is not identified as one of the three victims in the Indictment.

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Hinderer also messaged a cousin⁴ via social media just three days before the funeral, stating “[t]hey aren’t gonna make it out,” and confirming that he “[j]ust got a 200 box of ammo.”

Hinderer’s family reported his messages to the FBI, and Hinderer was taken into custody by local law enforcement in Florida on January 3, 2024. Hinderer was subsequently indicted on five counts of communicating a threat to injure in violation of 18 U.S.C. § 875(c) and pleaded guilty to a single count of the indictment pursuant to a written plea agreement.

Hinderer’s Pre-Sentence Investigation Report (“PSR”) outlined the various threatening statements Hinderer made, and it applied a six-level enhancement to his base offense level pursuant to U.S.S.G. § 2A6.1(b)(1) on the ground that the offense involved “conduct evidencing an intent to carry out [the] threat.” Hinderer filed an objection to the PSR, but did not dispute any of the facts contained in the PSR. Hinderer only argued that there was insufficient evidence as a matter of law to support applying the § 2A6.1(b)(1) enhancement.

At the sentencing hearing, the Government called Special Agent Walter Castillo to testify. Agent Castillo testified that he executed a search warrant on Hinderer’s phone and discovered two additional pieces of evidence that were not included in the PSR.

⁴ The Indictment refers to Hinderer’s cousin as “K.C.” This individual is not identified as one of the three victims in the Indictment.

First, Hinderer used his phone to search for train tickets from Florida to Connecticut prior to his arrest and messaged at least one person confirming he obtained a ticket. Second, Hinderer texted several friends and family members that he did not intend to threaten, advising them of his plans and encouraging them to stay away from Hinderer's mother's funeral for their own safety.⁵

After hearing the evidence, the District Judge overruled Hinderer's objection and made the following finding:

In terms of the conduct, he said he claimed to have bought ammunition. He researched the purchase of a ticket, an Amtrak ticket, to go to the funeral. I mean, it's significant. He warned people to stay away, which is not part of the threat. It's a warning to people apparently he didn't want to hurt, not to go to the funeral. The fact that he didn't get to the funeral was a result of his arrest. And so I find that this offense characteristic applies.

II.

Whether a defendant's conduct evidenced an intent to carry out a threat is a mixed question of law and fact. *United States v. Scott*, 441 F.3d 1322, 1328 (11th Cir. 2006). We review a district court's factual findings for clear error, but we review de novo a district court's legal determination that the facts evidence an intent

⁵ Hinderer also stipulated to this fact in his factual proffer when he entered his guilty plea.

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to carry out a threat within the meaning of U.S.S.G. § 2A6.1(b)(1).
Id.

In reviewing the application of a sentence enhancement, we are mindful that “[g]uideline sentencing is an adversarial process.” *United States v. Scroggins*, 880 F.2d 1204, 1209 (11th Cir. 1989). When facts contained in the PSR are not disputed by either side, the PSR effectively functions as a “pretrial stipulation,” and the facts contained in the PSR are taken as true for purposes of sentencing. *Id.* at 1209 n. 11; *United States v. Taylor*, 88 F.3d 938, 943 (11th Cir. 1996) (noting “[t]he facts reported in Taylor's presentence investigation report” were “adopted for purposes of sentencing”).

III.

Section 2A6.1(b)(1) calls for a six-level enhancement “[i]f the offense involved any conduct evidencing an intent to carry out [the] threat.” U.S.S.G. § 2A6.1(b)(1). In applying this enhancement, courts may consider conduct that occurred both before and after the threat was made. *United States v. Barbour*, 70 F.3d 580, 587 (11th Cir. 1995).

Here, there was sufficient evidence in the record for the District Court to conclude that Hinderer's conduct evidenced an intent to carry out his threat to kill everyone at his mother's funeral. Hinderer admitted in a text, just days before the funeral, that he acquired “a 200 box” of ammunition.⁶ A defendant's acquisition of

⁶ In his brief, Hinderer repeatedly denies purchasing ammunition. But Hinderer's statement confirming that he purchased ammunition is in his PSR, and

weapons and ammunition is probative of the defendant's intent to do more than just make "idle threats," especially when the armaments are obtained close in time to the threat itself. *Barbour*, 70 F.3d at 587. Hinderer's decision to arm himself in the days before his mother's funeral is consistent with his threat that he would "shoot everybody" at the funeral, and is probative of his intent to do exactly that.

Hinderer's search for a train ticket from his home in Florida to the location of the funeral in Connecticut is also probative of Hinderer's intent to follow through with his threats. As with the purchase of ammunition, Hinderer's plan to travel to Connecticut is consistent with his threat to kill everyone that showed up to the funeral. The only thing that prevented Hinderer from making it to the funeral was the timely intervention of law enforcement, who took Hinderer into custody three days before the funeral was set to occur. Our cases make clear that a defendant who takes concrete steps towards acting on a threat can receive a § 2A6.1(b)(1) enhancement, even when their plans do not come to fruition. In *Taylor*, we upheld the application of a § 2A6.1(b)(1) enhancement to a defendant who sent threatening messages to his former high school girlfriend and her family. *Taylor*, 88 F.3d at 941–43. We held that "[t]he best evidence of [the defendant's] intent to carry out his

Hinderer did not object to any of the facts contained in his PSR. Because Hinderer did not dispute the accuracy of his statements contained in the PSR before the District Court, he cannot dispute those facts before this Court. *Scroggins*, 880 F.2d at 1209 n. 11.

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threats” was that the defendant “*solicited*” a former cellmate to murder the threatened victims. *Id.* at 943 (emphasis added). Whether the defendant actually came to an agreement with his cellmate was of no moment to our analysis. The defendant’s efforts to procure his cellmate’s assistance was probative of the defendant’s intentions, regardless of whether those efforts were successful. The same is true in this case. The fact that Hinderer did not actually make it to Connecticut does not make his search for a ticket any less probative of his intent to travel to Connecticut for purposes of carrying out his threats.

Finally, Hinderer’s messages to certain friends and family warning them about his intentions and encouraging them to stay away from the funeral is further evidence of Hinderer’s intent to follow through with his threats. Unlike the threatening statements that were directed towards the three victims, Hinderer’s warnings to other friends and family could not be explained by an ulterior motive of causing the three victims to fear for their safety. There would be no discernable reason for Hinderer to issue warnings to those whom he did not intend to harm unless he was actually planning on doing harm to those who came to the funeral.

IV.

All of the evidence relied upon by the District Court in applying § 2A6.1(b)(1) was probative of Hinderer’s intent to follow through with his threats. Taken together as a whole, the evidence was sufficient to satisfy the Government’s burden of demonstrating that the enhancement applied. Accordingly, Hinderer’s sentence is **AFFIRMED**.