

Sting Operations and Smartphones: Tovar Validates Federal Charges Built on Digital Communications

Description

The United States Court of Appeals for the Eleventh Circuit recently rendered an opinion in *United States v. Tovar*, a case that deals with human trafficking charges and considers whether the use of a cell phone or the Internet is sufficient to satisfy a federal statute's interstate commerce element.

Summary of Facts

In 2022, federal agents in Florida conducted an undercover operation to target individuals seeking to engage in commercial sex acts with minors. The agents posted false advertisements for young girls on MegaPersonals, a website notorious for sex trafficking. Ralph Tovar quickly responded to one of the ads, persistent in setting up a meeting. He explicitly stated his sexual interests in the two fictitious girls, aged thirteen and fifteen, over text messages on two different phone numbers. During the communications between the federal agents and Tovar, he asked about the girls' availability, services, and additional options for extra fees. He also fully acknowledged that he was seeking sexual acts with minors.

After negotiating a price of \$550 for various acts and requesting assurances about confidentiality, he withdrew the agreed-upon cash and arrived at the designated hotel. After he confirmed the age of a girl and exchanged money with an undercover agent, Tovar was handed a hotel room key and promptly arrested. Tovar was indicted and charged with attempted sex trafficking of a minor and one count of attempted coercion and enticement of a minor to engage in sexual activity. At trial, Tovar tried to claim that his true intent was to rescue the girls. He admitted that it was not a well thought-out plan, and the jury ultimately rejected the argument. Tovar appealed his conviction.

United States Court of Appeals for the Eleventh Circuit

On appeal, Tovar first challenged the sufficiency of the evidence supporting the interstate-commerce nexus. Specifically, he argued that his conduct never crossed state lines and thus did not justify federal prosecution under 18 U.S.C. § 1591(a). This raised the question of whether the statute's interstate commerce requirement is a limit on a federal court's power or merely a fact for the jury. The confusion stemmed from prior Supreme Court cases that would sometimes describe interstate commerce as "jurisdictional," which threatened federal convictions if not strictly proven. In this case, however, the Eleventh Circuit rejected this view and held that the interstate-commerce element is not jurisdictional. The Court explained that this does not limit a court's authority to hear the case but is rather simply part of what the government must prove to get a conviction. As a result, failure to satisfy interstate commerce affects only the merits and does not invalidate the court's ability to decide the case. The court stressed that Congress did not make this an explicit jurisdictional restriction. Rather, the Eleventh Circuit concluded that courts should treat it just like any other statutory element. Therefore, the court concluded that the government needs to prove the interstate-commerce

requirement to the jury, but it does not impact the federal court's subject-matter jurisdiction.

The court then addressed Tovar's argument that since he or the girls never crossed state lines, he did not engage in interstate commerce; thus, the federal agents did not have jurisdiction. Since this was not raised in district court, the court reviewed it under plain error. This required Tovar to show that (1) an error occurred, (2) the error was obvious, and (3) the error affected his substantial rights. However, the Eleventh Circuit would use their discretion to remedy the error only if it had a serious negative impact on fairness, honesty, or public confidence in the judicial process.

The Eleventh Circuit cited their own precedent of *United States v. Ballinger*. In *Ballinger*, they defined "in commerce" as referring to both the channels within which people and goods move through the flow of commerce and the instrumentalities used to facilitate that movement. In other words, this can refer to tools or systems that regularly traverse or affect multiple states, including the use of cell phones and the Internet. Here, Tovar used the Internet to initiate contact with the agents and then cell phones to send them text messages about meeting and the transaction. He tried to argue that the use of cell phones did not satisfy the instrumentality requirement. The court cited their precedents set in *United States v. Evans* and *United States v. Batson* while rejecting his argument. In *Evans*, the Eleventh Circuit concluded that a defendant's use of a cell phone alone, even without evidence that the calls he made were routed through an interstate system, was sufficient to satisfy a similar statute's interstate-commerce requirement. In *Batson*, the Eleventh Circuit established the principle that using facilities or instrumentalities of interstate commerce, including social media, text messages, and cell phones, is sufficient to satisfy the interstate commerce requirement in 18 U.S.C. § 1591. Therefore, the court concluded that Tovar's use of both cell phones and the Internet constitutes sufficient interstate commerce for federal prosecution even if no one physically crossed a state line. Ultimately, the court rejected Tovar's plain error challenge because he could not prove that there was an error of federal jurisdiction.

Tovar's second argument claimed that the district court gave an erroneous jury instruction that equated use of interstate-commerce facilities with automatic satisfaction of the statutory requirement. He argued that this language treated the use of these facilities as automatically satisfying the statute, regardless of other facts, and without considering whether he knew that his actions involved interstate commerce. The court disagreed. Once again drawing on both *Evans* and *Batson*, precedent makes it clear that crimes which use the instrumentalities or facilities of interstate commerce do in fact qualify as "in commerce" for purposes of the statute even if everything happens within one state. The court stressed that the law does not require the defendant to know their conduct used interstate commerce, just that they actually used it to commit the crime. Thus, the court concluded that the jury instruction was fully consistent with binding precedent and was not erroneous in any way.

Key Takeaways

Tovar emphasizes that using digital communication tools such as cell phones, texts, and internet platforms to arrange illegal sex acts with minors satisfies the federal interstate commerce requirement, even if all conduct occurs within a single state. As underscored here, ensure that all undercover sting operations that target those seeking to buy sex with minors are lawful. It is also crucial to preserve digital evidence and document financial and location details like meeting spots. Overall, Tovar affirms the critical role of technology in modern trafficking investigations and gives law enforcement confidence

that cases relying on electronic evidence and interstate commerce elements will withstand appellate scrutiny.

United States v. Tovar, No. 23-10755 (11th Cir. 2025)

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