

UNITED STATES OF AMERICA v. TIMOTHY J. SMITH: ELEVENTH CIRCUIT
VACATES CONVICTION CITING IMPROPER VENUE BASED ON THE ESSENTIAL
ELEMENTS OF CONDUCT FOR THEFT-OF-TRADE-SECRETS

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In *United States v. Smith*, the Eleventh Circuit vacated one theft-of-trade-secrets conviction and the related sentencing enhancements due to improper venue and affirmed and remanded for resentencing a second related conviction.¹ A jury in the District Court for the Northern District of Florida convicted Timothy J. Smith of one count of theft of trade secrets and one count of extortion.² On appeal, the Eleventh Circuit held that the venue was improper as to Smith’s conviction of theft of trade secrets because he committed no “essential conduct in that location,” and therefore the conviction was vacated.³ The court also found sufficient evidence to affirm Smith’s conviction of extortion, and because vacation of the first count did not necessitate the vacation of another, the court remanded the case for resentencing.⁴

Timothy J. Smith lived in Mobile, Alabama and remained in Mobile throughout the course of events involved.⁵ He was an ardent fisherman as well as a software engineer.⁶ In 2018, he became aware of StrikeLines, a business that sells coordinates of artificial fishing reefs to fisherman in the Gulf of Mexico.⁷ StrikeLines obtains coordinates of artificial reefs through public records and sonar-equipped boats traveling around the Gulf of Mexico.⁸ Once receiving and processing the data, StrikeLines sells the coordinates to fishermen on their website hosted in Orlando.⁹ Smith began visiting StrikeLine’s website by using a web application called Fiddler, which allowed Smith to access the coordinates of the reefs without payment.¹⁰ He was able to later access the coordinates even after advanced security was installed.¹¹

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¹ *United States v. Smith*, 22 F.4th 1236 (11th Cir. 2022).

² *Id.* at 1238.

³ *Id.* at 1243.

⁴ *Id.* at 1242.

⁵ *Id.* at 1238.

⁶ *Id.* at 1238.

⁷ *Smith*, 22 F.4th at 1238.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 1238–39.

After acquiring information from a mutual acquaintance, Smith contacted the owners of StrikeLines, Tristan Harper and Travis Griggs, and informed them that he had obtained the private coordinates but refused to explain how he accessed them.¹² Once the owners learned the coordinates could be accessed without payment, their website developer upgraded the security of the website with extra layers of protection.¹³ Despite the security enhancement, several of StrikeLines's customers reported to the owners that Smith had posted on his personal Facebook that he had access to all of the coordinates, and that he was offering to give the coordinates to those who had previously purchased coordinates from StrikeLines.¹⁴ Griggs reached out to Smith via text message and indicated that Smith was "creating a lot of trouble" and "causing actual harm to StrikeLines's reputation."¹⁵ Smith responded by offering to delete the post and stop giving the coordinates away in return for "deep grouper spots."¹⁶ After Griggs apparently failed to provide Smith with these deep grouper coordinates, Smith told Griggs he would continue to give coordinates away on his Facebook.¹⁷ When attempts to communicate with Smith failed, the owners of StrikeLines contacted law enforcement.¹⁸ Law enforcement executed a search warrant and seized Smith's electronic equipment that was identified to have been used to procure and distribute the coordinates.¹⁹ While the agents were conducting the search, Smith confessed that he accessed the website using a decryption code he created and that he had shared the coordinates via Facebook.²⁰

Smith was subsequently indicted by a federal grand jury on three counts in the Northern District of Florida.²¹ The first count was for violating the Computer Fraud and Abuse Act "for knowingly and intentionally accessing a computer without authorizations and for obtaining information with a value exceeding \$5,000 for a protected computer."²² Smith's indictment also included one count of theft-of-trade-secrets and a count for "transmitting a threat through interstate commerce with intent to extort a thing of value."²³ Smith moved to dismiss all counts based on lack of proper

¹² *Smith*, 22 F.4th at 1239.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (internal quotations omitted) (alteration in original).

¹⁶ *Id.*

¹⁷ *Smith*, 22 F.4th at 1239.

¹⁸ *Id.* at 1239–40.

¹⁹ *Id.* at 1240.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*; 18 U.S.C. § 1030(a)(2)(C), (c)(2)(B)(iii).

²³ *Smith*, 22 F.4th at 1240; *see* 18 U.S.C. §§ 1832(a)(1), 875(d).

venue, arguing that the evidence was insufficient to show “that any essential conduct element occurred in the Northern District of Florida.”²⁴

Throughout the commission of the events at issue, Smith remained a resident of Mobile, while StrikeLines’s headquarters were in Pensacola and the coordinate data was stored on servers in Orlando.²⁵ Smith argued that venue in the Northern District of Florida based on StrikeLine’s headquarters was improper as for the first two counts because the conduct of the events occurred in the Southern District of Alabama and the data was obtained in the Middle Strict of Florida.²⁶ The district court denied the motion, siding with the government that such motion was premature.²⁷ Smith reraised the motion during the trial, as well as challenging the sufficiency of the evidence.²⁸ The government argued venue was proper because the data was obtained from the Northern District of Florida due to it being produced in Pensacola.²⁹ Therefore, the effects of the conduct were felt in Pensacola.³⁰ The government also contended there was sufficient evidence.³¹ The district court again denied Smith’s motion to dismiss for the third count, but reserved ruling for first two.³² The jury then found Smith guilty for the second and third counts.³³ Following the trial, Smith again argued venue was improper, which the district court once more denied.³⁴

On appeal, the Eleventh Circuit reviewed *de novo* the lower court’s ruling on proper venue and application of the sentencing guidelines.³⁵ The court also reviewed district court’s sentencing findings of fact under the clear error standard.³⁶

For the first count, theft-of-trade-secrets, the Eleventh Circuit held that venue was improper in the Northern District of Florida because there was no essential conduct committed there.³⁷ The court explained that for venue to be proper, it must be at the place of the crime, which is determined by “the nature of the crime alleged and the location of the act or acts constituting it.”³⁸

²⁴ *Smith*, 22 F.4th at 1240.

²⁵ *Id.* Mobile is in the Southern District of Alabama, Pensacola is in the Northern District of Florida, and Orlando is in the Middle District of Florida. *See id.*

²⁶ *Id.*

²⁷ *Id.* at 1241.

²⁸ *Smith*, 22 F.4th at 1240.

²⁹ *Id.* at 1241.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Smith*, 22 F.4th at 1241.

³⁵ *Id.* at 1242.

³⁶ *Id.* at 1238.

³⁷ *Id.* at 1243.

³⁸ *Id.* at 1242 (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999)).

The court identified the essential conduct element of theft-of-trade-secrets was “that the defendant must steal, take without authorization, or obtain by fraud or deception trade-secret information”³⁹ Seeing as though Smith remained in Mobile throughout the commission of the crime, no essential conduct took place in the Northern District of Florida.⁴⁰ While the government cited precedent relating to the Hobbs Act to argue that the effects of the crime should be considered in determining essential conduct, the court found this case distinguishable because “[t]he theft-of-trade-secrets statute does not define any essential conduct element of the offense in terms of its effects on the owner of the trade secret.”⁴¹ Because the court held venue was improper, Smith’s conviction was vacated and the court therefore did not need to address the sufficiency of evidence.⁴² Smith argued that because his theft-of-trade-secrets conviction was vacated, the other conviction should also be vacated, but the court disagreed, noting precedent that allowed for such affirmation.⁴³

While the Eleventh Circuit did not address the sufficiency of the evidence for the theft-of-trade-secrets conviction, the court did address Smith’s conviction of extortion.⁴⁴ The court held that Smith could not meet the burden of showing that there was “no reasonable construction of the evidence that could support a guilty verdict.”⁴⁵ Due to the messages between Smith and Griggs, the jury had sufficient evidence to convict Smith of extortion, and thus his conviction was affirmed.⁴⁶

The court lastly addressed the sentencing enhancements for Smith’s convictions as well as a possible reduction for acceptance of guilt.⁴⁷ Because the theft-of-trade-secret conviction was vacated, the court also vacated the sentencing enhancement for that conviction.⁴⁸ As for the extortion claim, the court vacated the district court’s sentencing enhancements for its “use of sophisticated means and special skill” as they were based on the theft-of-trade-secrets offense.⁴⁹ Smith argued that because he accepted responsibility, his sentence should also be reduced.⁵⁰ However, the court found no clear error with respect to the district court’s finding that Smith did not accept

³⁹ *Id.* at 1243.

⁴⁰ *Smith*, 22 F.4th at 1243.

⁴¹ *Id.* at 1244.

⁴² *Id.*

⁴³ *Id.* at 1244–45.

⁴⁴ *Id.* at 1245.

⁴⁵ *Id.* at 1245.

⁴⁶ *Smith*, 22 F.4th at 1245.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 1246.

responsibility, and that he did not make any affirmative argument that he accepted responsibility.⁵¹ Ultimately, the court affirmed the enhancement for obstruction of justice, the denial of acceptance of responsibility, and remanded for resentencing only for count three.⁵²

The Eleventh Circuit's decision in *United States v. Smith* clarifies which elements of theft-of-trade-secrets are essential to determining venue. The court explained that the effects on the owner of the trade secrets have no impact on the essential elements of conduct for the theft of trade secrets, and therefore the location of those effects has no value in determining venue. This decision demonstrates the procedure for determining venue for future litigations and when a conviction should be vacated. Seeing as though much time and effort are spent on a trial, it is essential that procedural issues are dealt with correctly to preserve the rights of the parties involved and the resources spent on such an endeavor.

⁵¹ *Id.* at 1245–46.

⁵² *Smith*, 22 F.4th at 1246.