

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

BEVERLY A. CLAIBORNE, JR., a/k/a
BJ, a/k/a Tyrone Crooks,
Defendant-Appellant.

No. 01-4943

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Richard L. Williams, Senior District Judge.
(CR-99-297)

Submitted: May 14, 2002

Decided: May 31, 2002

Before WILLIAMS, MICHAEL, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Cary B. Bowen, D. Gregory Carr, Aileen F. Tucker, BOWEN, BRY-
ANT, CHAMPLIN & CARR, Richmond, Virginia, for Appellant.
Paul J. McNulty, United States Attorney, David T. Maguire, Assistant
United States Attorney, G. Russell Stone, Special Assistant United
States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Beverly A. Claiborne, Jr., appeals his convictions and sentences for conspiracy to distribute cocaine base and heroin; five counts of possession with intent to distribute cocaine base; distribution of heroin; murder in aid of racketeering activity; use and carry of a firearm during a crime of violence; and murder during a crime of drug trafficking. He asserts on appeal that (1) the district court abused its discretion in denying his motion for a mistrial; (2) there was insufficient evidence to support the jury's findings regarding drug quantity; (3) there was insufficient evidence to support his convictions for murder in aid of racketeering and murder during a crime of drug trafficking; and (4) the Government presented insufficient evidence of an effect on interstate commerce to invoke federal jurisdiction. Finding no merit to Claiborne's claims, we affirm.

First, as to the prosecutor's comments during closing arguments concerning Claiborne's failure to testify, we conclude that the district court did not abuse its discretion in denying Claiborne's motion for a mistrial on this basis. Even assuming the prosecutor's remarks constituted a direct comment on Claiborne's failure to testify, *see United States v. Whitehead*, 618 F.2d 523, 527 (4th Cir. 1980), we conclude that they did not affect Claiborne's substantial rights. *See United States v. Harrison*, 716 F.2d 1050, 1052 (4th Cir. 1983).

We also find that sufficient evidence supported the jury's findings regarding drug quantity as well as Claiborne's convictions for murder in aid of racketeering activity and murder during a crime of drug trafficking. A reviewing court must uphold a jury's verdict if there is substantial evidence to support it. *Glasser v. United States*, 315 U.S. 60, 80 (1942). We have reviewed the record and are satisfied that substantial evidence supports each of the jury's findings.

Finally, we hold that the Government presented sufficient evidence of an effect on interstate commerce to support Claiborne's conviction for murder in aid of racketeering activity under 18 U.S.C.A. § 1959 (West 2000). The Government need only show that the enterprise's activities had a de minimis effect on interstate commerce. The Government met this standard in this case by presenting the jury with evidence of the presence of crack cocaine and heroin in the Commonwealth of Virginia along with evidence that the plants required to produce these drugs do not grow in Virginia. *See United States v. Gray*, 137 F.3d 765, 772-73 (4th Cir. 1998). We note that the Government was not required to prove an effect on interstate commerce to obtain a conviction on the remaining counts.

Accordingly, we affirm Claiborne's convictions and sentences. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED