

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018**

MELINDA CAMPBELL

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

**Petition for a Writ of Certiorari
To The United States Court of
Appeals For The Sixth Circuit**

**PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX**

**Mark Wettle
1012 South Fourth St.
Louisville, Kentucky
(502)585-3030
Counsel of Record for Petitioner**

QUESTIONS PRESENTED FOR REVIEW

Whether the Sixth Circuit Court of Appeals disregarded this Court's established precedent set forth in *United States v. Enmons*, 410 U.S. 396 (1973), and whether in a prosecution under the Hobbs Act where economic harm is alleged, the government must prove the defendant knew their conduct was wrongful.

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OPINIONS BELOW

The unpublished Order and Opinion of the United States Court of Appeals for the Sixth Circuit affirming Appellant's convictions was filed January 15th, 2019 and is contained in the appendix hereto.

The Judgement of the United States District Court for the Eastern District of Kentucky was entered on May 26th, 2017 and is contained in the appendix hereto.

JURISDICTION

The Court's jurisdiction is pursuant to 28U.S.C. §1254(1). The United States Court of Appeals for the Sixth Circuit decision sought to be reviewed is dated January 15th, 2019. No Petition of Rehearing has been filed.

Pursuant to Rule 10.1(c) of the United States Supreme Court Rules this case presents important questions of Federal law decided by a United States Court of Appeals which have not been settled by this Court and/or contrary to the established precedent of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

There is no constitutional provisions directly involved in the present case .

STATEMENT OF THE CASE

In its Indictment and at trial, the United States alleged that Elliot Campbell and Melinda Campbell along with Bryan Napier conspired to defraud shipping brokers by making promises regarding shipments made by their various trucking companies that they couldn't possibly keep, or that they had no intentions of keeping. These promises included the time in which the deliveries were to be made ("expedited" deliveries that had to be made by a certain time), the manner of shipment, (exclusive loads that were to consist of a truck bearing only the one shipment), and the means of delivery, (use of team drivers to ensure expedited delivery, instead of just one driver). The United States also alleged that after the conspirators violated one or more of their promises to the shipping brokers, (usually by failing to timely deliver a load), they would hold the shipment, for ransom, demanding payment in full before delivery, in violation of their contract with the broker.

Although the Campbells operated their trucking business out of Chavis Kentucky, the United States alleged that the conspirators would create new trucking companies with new names and locations to mislead the shipping brokers who searched on websites for trucking companies that could handle

loads for their customers. These companies created and operated by the Campbells included Interstate Lines Inc. West Coast Trans Inc. And Zinc Inc. Out of state Phone numbers and addresses were created for these companies. Misleading paperwork was also provided to the brokers, as well as altered Insurance forms showing excess insurance coverage that did not exist.

At the close of the government's proof at trial the Campbells moved orally for a directed verdict of acquittal . Specifically, in relation to the Extortion charge, the Campbells argued that the evidence did not show that the Campbells put the alleged victims, the brokers in fear of economic loss as required by the Extortion statute, instead the evidence demonstrated that the brokers and Campbells had been involved in contract disputes. The court reserved its ruling on that motion.

The Campbells filed a Motion for JNOV, after the close of all evidence. In that motion the Campbells argued that the government's proof at trial on the Extortion count failed in at least four respects. "First the government offered no evidence and thus failed to prove that the Campbells acted unlawfully in withholding delivery until payment for their shipping services was received . Second the government failed to prove beyond a reasonable doubt that the Campbells knew that their conduct was illegal. Third the government failed to prove that any purported victim was placed "in fear" of economic harm. And fourth, neither the indictment nor the proof at trial delineated which act committed by the Campbells, that is which shipment of goods , was the subject of the extortion. After considering the Response of the Government, the District

Court entered a written Order and Memorandum overruling the Motions for a directed verdict and Judgement of Acquittal. Addressing the Campbells' arguments, and evaluating the evidence in a light most favorable to the government, the Court found that Campbells' customers were put in fear since they afraid that they would lose money on the delivery , lose future business, or become liable to their down-the-line customers for consequential damages. The court acknowledged the general rule in the trucking industry, that shippers possess a carriers lien that allows them to withhold delivery until a customer pays; but the court found that the Campbells waived that right in the contracts they executed with the respective brokers. The court also found evidence that the Campbells intended to commit extortion in their business' general deceptive practices . Those practices included creating new "fake" companies, rejiggering loads and failing to obtain excess insurance as promised.

On Appeal to the Sixth Circuit, Melinda Campbell renewed her argument that the evidence did not establish that the Campbells put the alleged victims, the brokers in fear of economic loss as required by the Extortion statute, instead the evidence demonstrated that the brokers and Campbells had been involved in contract disputes. Specifically Melinda argued that the government's evidence failed to show -that the Campbells acted unlawfully in withholding delivery until payment for their shipping services was received , and government failed to prove beyond a reasonable doubt that the Campbells knew that their conduct was illegal.

Melinda pointed out that the Hobbs Act defines extortion as "obtaining of

property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” See *United States v. Cross*, 677 F.3d 278 (6th Cir., 2012). In its Indictment and at trial the government argued that the Campbells threatened the fear of economic harm to accomplish their extortions. To demonstrate that the concept of economic harm must be viewed differently under the Hobbs Act Melinda cited *United States v. Sturm* 870 F.2d 769 (1st Cir. 1989) where the First Circuit Court found the economic harm portion of the Hobbs Act to be qualitatively different from the other prongs of the Act, and to allow for different defenses as opposed to the other prongs. The Sturm Court stated:

“Although it may be appropriate not to recognize a claim of right defense in extortion cases based on the wrongful use of force or violence, different considerations apply in the context of extortion based on economic fear. Whereas the use of actual or threatened force or violence to obtain property is inherently wrongful, see *Enmons*, 410 U.S. at 399-400, 93 S.Ct. at 1009-10, there is nothing inherently wrongful about the use of economic fear to obtain property, see *United States v. Kattar*, 840 F.2d 118, 123 (1st Cir.1988)” The point of the preceding discussion is that unlike extortion cases based on the use of force and violence, extortion cases based on the use of economic fear typically will not involve allegations of wrongful means, but only allegations of wrongful ends. For these typical economic fear cases, it is self-evident that a defendant cannot be found guilty of wrongfully obtaining property through the use of a legitimate economic threat if he has a claim of right to the property.

We therefore hold that for purposes of the Hobbs Act, the use of legitimate economic threats to obtain property is wrongful only if the defendant has no claim of right to that property.

We conclude that the term "wrongful" requires the

government to prove, in cases involving extortion based on economic fear, that the defendant knew that he was not legally entitled to the property that he received. Our conclusion is grounded in the notion, "universal and persistent in mature systems of law," that "an injury can amount to a crime only when inflicted with intention." *Morissette v. United States*, 342 U.S. 246, 250-51, 72 S.Ct. 240, 243, 96 L.Ed. 288 (1952).

Melinda argued that the evidence presented at trial simply failed to show such an intention on the part of the Campbells. Elliot Campbell testified that he believed he had a legal right to withhold delivery of the cargos when a dispute arose with a broker. Bryan Napier also testified that at the time he worked for the Campbells, he believed that he could legally demand payment for a load before delivery if a dispute arose with the broker. Several brokers who testified for the prosecution acknowledged that in the trucking industry, it was generally recognized that a carrier had a "common law right" to a lien on goods held for delivery, and that a carrier could hold on to those goods until satisfactory payment was made. Indeed the trial court, in overruling the defendants motion for JNOV found that this "otherwise compelling argument" was only overcome by the form contracts signed by the parties that waived this common law lien. Contracts that no witness during trial testified that they relied upon or even cited when they negotiated with the Campbells.

In its unpublished opinion, a three judge panel of the Sixth Circuit Court of Appeals recognized that "to convict Melinda for conspiracy to commit extortion, the

government needed to prove that Melinda agreed to take money from the victims by wrongfully making them fear economic loss.” The Court went on to find sufficient evidence that the Campbells put their alleged victims in such economic fear.

There is also sufficient evidence that the Campbells put their victims in fear of economic loss. One victim, Richard Carlisle, testified that he felt like he had “no choice” but to pay the Campbells’ ransom to deliver his cargo. (R. 158 at 27–39, 35–26.) Carlisle was afraid he would incur hundreds of thousands of dollars in liability if the Campbells failed to make his delivery as promised. Carlisle’s fear materialized when he lost customers following shipping delays because, as his customers explained, the Campbells were “a poor carrier . . . and a bad choice.” (Id. at 35.)

Another victim, Josh Bell, said that he “panicked” when the Campbells demanded additional payments. (R. 213 at 112, 119–120.) The Campbells never mentioned a carrier’s lien. Instead, they “just demanded to be paid.” Bell testified that he “had no choice but to go out on limb and trust that [the Campbells were] going to make delivery once we paid [them]”—and he was “extremely” concerned about “[p]otential lost revenue.” (Id. at 119.) Finally, Napier confirmed that the Campbells knew their conduct was unlawful. Napier explained that the Campbells would stop the trucks, demand payment before delivery, and “instruct [the drivers] not to deliver” until the customers paid “a new rate, a higher rate.” (R. 156 at 50–51, 118.) The government also introduced evidence that the Campbells waived any right to a carrier’s lien, created fake company names and employee names, and used aliases to register fake companies by submitting falsified forms. The Campbells also lied about trucking insurance, the conditions of delivery, and why the deliveries were late.¹ (R. 156 at 43–44 (explaining that customers complained and would try to contact the drivers, but the Campbells gave the drivers excuses and lies to tell the customers).)

To be sure, Melinda is correct that there is some

evidence and testimony that supports her argument. For example, some victims testified that they did not read the contracts and that sometimes the parties waived contractual provisions. The Campbells also tried to deliver cargo to customers at a police station. And according to both Napier and Elliot, if a dispute arose, they believed they had a legal right to withhold delivery. But this counter-evidence simply means, at most, that the jury heard conflicting evidence. Faced with this two-sided record, the jury was free to weigh the evidence, make credibility determinations, and reach its verdict. And in such a situation, we cannot substitute our judgment for that of the jury. There was sufficient evidence for the jury to convict Melinda for conspiracy under the Hobbs Act. This is especially true after we view—as we must—the evidence in a light most favorable to the prosecution. Melinda’s first objection under the Hobbs Act is not a winner.
(United States v. Campbell slip opinion pp7-9)

REASONS FOR GRANTING THE PETITION

In the present case the United States alleged in both its Indictment and at trial that Melinda Campbell violated the Hobbs Act by extorting her alleged victims not through threats of violence as is explicitly forbidden by the Act but by placing them in “economic fear.” Fear, in the context of the Hobbs Act, can include fear of economic loss. ; United States v. Greger, 716 F.2d 1275, 1278-79 (9th Cir. 1983); Rennell v. Rowe, 635 F.3d 1008, 1012 (7th Cir. 2011); Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., 140 F.3d 494, 522 (3d Cir. 1998) ("The term 'fear' includes the fear of economic loss."). But as the First Circuit Court recognized

"there is nothing inherently wrongful about the use of economic fear to obtain property." *United States v. Sturm*, 870 F.2d 769, 773 (1st Cir. 1989). "[T]he fear of economic loss is a driving force of our economy that plays an important role in many legitimate business transactions." *Brokerage Concepts, Inc.*, 140 F.3d at 523. Courts must therefore differentiate between legitimate use of economic fear--hard bargaining--and wrongful use of such fear--extortion. See, e.g., *George Lussier Enters., Inc. v. Subaru of New England, Inc.*, 393 F.3d 36, 50 (1st Cir. 2004). Courts of course have acknowledged that "Distinguishing between hard bargaining and extortion can be difficult." [*8] *Rennell*, 635 F.3d at 1011.

For guidance, courts have traditionally turned to this Court's opinion in *United States v. Enmons*, 410 U.S. 396 (1973). See, e.g., *Rennell*, 635 F.3d at 1011; *Brokerage Concepts, Inc.*, 140 F.3d at 522. In *Enmons*, this Court held that a defendant violates the Hobbs Act only "where the obtaining of the property would itself be 'wrongful' because the alleged extortionist has no lawful claim to that property." 410 U.S. at 400. Defending against an accusation of extortion "based on a lawful claim to the property obtained has been dubbed the 'claim of right' defense to extortion." *Brokerage Concepts, Inc.*, 140 F.3d at 522.

In *Enmons*, this Court faced the question whether the use of violence in a labor strike to obtain higher wages and other benefits was extortion within the meaning of the Hobbs Act. This Court reviewed the wording of the Act and its legislative history and determined that such conduct was not extortion. In reaching

its decision, the Court interpreted the word wrongful, which is not defined in the Act, as follows:

The term "wrongful," which on the face of the statute modifies the use of each of the enumerated means of obtaining property — actual or threatened force, violence, or fear — would be superfluous if it only served to describe the means used. For it would be redundant to speak of "wrongful violence" or "wrongful force" since, as the government acknowledges, any violence or force to obtain property is "wrongful." Rather, "wrongful" has meaning in the Act only if it limits the statute's coverage to those instances where the obtaining of the property would itself be "wrongful" because the alleged extortionist has no lawful claim to that property.

Id. at 399-400, (emphasis added).

The great weight of evidence at trial established that Melinda Campbell believed that her trucking companies had a "lawful claim" to the property in dispute through the common law lien granted to carriers over goods involved in any delivery dispute. Melinda's belief was supported not only by every broker who testified that they engaged in negotiations with her trucking companies rather than demanding delivery without prior payment, but also by the Department of Transportation which refused a brokers's complaint, regarding the Campbell's withholding of a delivery informing her that the "carrier has a lien and may withhold delivery of a shipment until all charges related to that shipment are paid."

In its opinion, however, the Sixth Circuit panel focused its attention not on the complete dearth of evidence showing that Melinda did not know that she had no lawful claim to the property but only to whether the government established that

the victims were put in economic fear. This elimination of the aspect of “criminal intent” on the part of Melinda while finding sufficient evidence of a Hobbs Act violation turned the longstanding jurisprudence of this Court on its head.

“Any mention of criminal intent” should not be read “as dispensing with it.” *Morissette v. United States*, 342 U.S. 246, 250, (1952). This rule of construction reflects the basic principle that “wrongdoing must be conscious to be criminal.” *Id.*, at 252, 72 . Justice Jackson explained, this principle is “as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.” *Id.*, at 250. The “central thought” is that a defendant must be “blameworthy in mind” before he can be found guilty, a concept courts have expressed over time through various terms such as mens rea, scienter, malice aforethought, guilty knowledge, and the like. *Id.*, at 252, 1 W. LaFare, *Substantive Criminal Law* § 5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the “general rule” is that a guilty mind is “a necessary element in the indictment and proof of every crime.” *United States v. Balint*, 258 U.S. 250, 251, (1922). This Court therefore generally “interpret [s] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them.” *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 70, (1994).

Morissette, for example, involved an individual who had taken spent shell casings from a Government bombing range, believing them to have been

abandoned. During his trial for “knowingly convert[ing]” property of the United States, the judge instructed the jury that the only question was whether the defendant had knowingly taken the property without authorization. 342 U.S., at 248–249, This Court reversed the defendant's conviction, ruling that he had to know not only that he was taking the casings, but also that someone else still had property rights in them. He could not be found liable “if he truly believed [the casings] to be abandoned.” *Id.*, at 271, . In *Liparota v. United States*, 471 U.S. 419, 420, (1985). this Court considered a statute making it a crime to knowingly possess or use food stamps in an unauthorized manner. The Court construed the statute to require knowledge of the facts that made the use of the food stamps unauthorized. *Id.*, at 425. In *Posters ‘N’ Things, Ltd. v. United States* 511 U.S. 513, (1994)., this Court interpreted a federal statute prohibiting the sale of drug paraphernalia. The Court held, an individual could not be convicted of selling such paraphernalia unless he “knew that the items at issue [were] likely to be used with illegal drugs.” *Id.*, at 524, Such a showing was necessary to establish the defendant's culpable state of mind. Again, in *X-Citement Video*, this Court considered a statute criminalizing the distribution of visual depictions of minors engaged in sexually explicit conduct. 513 U.S., at 68 The Court rejected a reading of the statute which would have required only that a defendant knowingly send the prohibited materials, regardless of whether he knew the age of the performers. *Id.*, at 68–69 . The Court held instead that a defendant must also know that those depicted were

minors, because that was “the crucial element separating legal innocence from wrongful conduct.” Id.,at 73.

This unbroken line of cases requiring proof of criminal intent on the part of the defendant stands in direct contradiction to the holding of the Sixth Circuit in the present case which focused only on the proof of economic fear suffered by the alleged victims. This Court should grant review of this case to correct the fundamental error of the Sixth Circuit Court of Appeals that proof of criminal intent is not required in a Hobbs Act prosecution based on economic fear.

CONCLUSION

For all the above reasons the Petitioner, Melinda Campbell by counsel respectfully prays that this Court grant her Petition for Certiorari to review the decision of the Sixth Circuit in this instant case.

s/Mark Wettle

Mark Wettle
1012 South Fourth Street
Louisville, Kentucky 40203
(502)585-3030

