

IN THE  
**Supreme Court of the United States**

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BRADLEY CAMPBELL,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Where there was no evidence that Petitioner used an instrumentality of interstate commerce in furtherance of a kidnapping, whether Petitioner's motion for judgment of acquittal on the kidnapping charge should have been granted.

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Petitioner Bradley Campbell respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

**OPINION BELOW**

The Fourth Circuit's unpublished opinion is available at 783 F. App'x 311 (4th Cir. Nov. 8, 2019); *see also infra*, Pet. App. 1a.

**LIST OF PRIOR PROCEEDINGS**

- (1) *United States v. Bradley Campbell*, District Court No. 5:14-CR-98-F, Eastern District of North Carolina (final judgment entered May 18, 2015).
- (2) *United States v. Bradley Campbell*, United States Court of Appeals for the Fourth Circuit, No. 15-4281 (decision issued November 8, 2019).

**JURISDICTION**

The Fourth Circuit issued its opinion on November 8, 2019. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

The federal kidnapping statute, 18 U.S.C. § 1201(a), provides in pertinent part as follows:

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense[.]

## STATEMENT OF THE CASE

### A. District Court Proceedings

On May 27, 2014, a grand jury in the Eastern District of North Carolina returned a three-count indictment charging Petitioner Bradley Campbell with hostage taking (count one), using a firearm in relation to a crime of violence (count two), and being a felon in possession of a firearm (count three). (Fourth Circuit Joint Appendix 3, 18-19; hereinafter “J.A.”). A superseding indictment subsequently replaced the hostage-taking charge with a charge alleging federal kidnapping. (J.A. 20-21). Petitioner moved to dismiss counts one and two of the superseding indictment, a motion the court denied. (J.A. 22-35; 43-46). At his arraignment, Petitioner entered a plea of not guilty to the three charges, and the case proceeded to trial. (J.A. 8-9).

At trial, the government presented evidence of the following: Petitioner and Erica Boyd lived together with their three children at a mobile home park in Spring Lake, North Carolina. (J.A. 108; 388-390). Although the couple had been together since 2009, their relationship was tumultuous, punctuated by arguments and infidelities on both sides. (J.A. 187, 238, 262-63, 389-91, 411-12).

On the evening of January 17, 2014, Mark Simon and two of his friends, Cody Jackson and Lenterrell Ray, stopped by the couple's home to play video games. (J.A. 321; 393-95). Erica was home, but Petitioner was not. People who knew Mark and Erica suspected that they were having an affair, and this was a topic of gossip in the neighborhood. (J.A. 256-58).

By midnight, Cody had left, but Mark and Lenterrell were still playing games on the television in the living room. (J.A. 241; 321). Erica, meanwhile, had dozed off on the living room couch, next to her youngest child, a baby, who was asleep in a playpen. (J.A. 396; 402). The two older children were in their bedrooms. (J.A. 401-02; 417-18).

Erica was awakened by Petitioner arriving home through the front door. (J.A. 396-97). He was holding a gun she had never seen before and had “an extreme look on his face.” (J.A. 396). Erica “automatically knew something wasn’t right” because “he didn’t look like himself.” (J.A. 397). His eyes were “very widened” and “did not look right.” (J.A. 413). Erica asked him, “[A]re you on some type of drugs?” (J.A. 413).

Instead of answering, Petitioner asked if anyone else was in the house. (J.A. 398; 414). Mark said that Lenterrell was in the bathroom. Petitioner ordered Lenterrell to come out and told both men to sit on the couch. (J.A. 322-23; 398). Petitioner was “pacing back and forth” and “yelling obscenities” about “how people think he’s a punk and . . . a weak link.” (J.A. 399). Petitioner accused Mark of “talking junk” about him and asked, “Did you or did you not say that I was a bitch?” (J.A. 323; 353; 416). Petitioner then shot Mark in the stomach. (J.A. 323).

At that point, Lenterrell ran out of the back door. (J.A. 323-24; 400). When Mark attempted to follow, Petitioner shot him twice more in the leg. (J.A. 324-25; 399-400). The baby woke up and began crying. (J.A. 402-03). Petitioner told Erica to pick up the baby. When Petitioner’s back was turned, Erica ran out the back door with the infant. (J.A. 216; 302; 325; 402-403).

Mark lay on the kitchen floor bleeding, and he eventually lost consciousness. (J.A. 325). Petitioner called his mother, Terra Pearson, who lived nearby. According to Terra, Petitioner was “really upset” and “just screaming.” (J.A. 251). He said, “Mama, I need you down here” and “I’ve hurt somebody.” (J.A. 251). After assuring Petitioner that she would come, Terra called the sheriff’s department. (J.A. 252).

Deputies responding to the call arrived at the home around 1:45 a.m.; they could hear “a loud voice” from inside “ranting and raving.” (J.A. 106; 111). The deputies knocked on the front door and announced that they were law enforcement. (J.A. 110-11). They heard the voice say, “Get the fuck out of here or I’ll kill everybody in

here.” (J.A. 113). Additional officers, including a special response team known as “SRT,” soon arrived and surrounded the home. (J.A. 116).

Over the course of the night and into the morning hours, police, family members, friends, and neighbors all attempted to persuade Petitioner to surrender and to allow Mark and the two children to leave. During these conversations, which took place over landline telephones, cell phones, and through the sheriff department’s megaphones, Petitioner repeatedly stated that he wanted marijuana before he would surrender. For example, Petitioner told hostage negotiator Joseph Webb that he intended to call some friends “to bring him marijuana” and that Webb should “let them come to the house with that marijuana.” (J.A. 189). Petitioner explained that “he wanted to smoke [marijuana] with his friends one last time before he surrendered.” (J.A. 189). Likewise, Petitioner told another officer that “he wanted to turn himself in, but he wanted to smoke some weed” before he did so. (J.A. 278).

Petitioner also called Dedrick McRae, who lived nearby with Mark’s mother, Betty LeSane. Petitioner threatened to kill Mark if they didn’t “bring . . . some weed and some cigars.” (J.A. 286). Petitioner told Betty that he needed the marijuana “to keep [his] nerves down” and that if she loved Mark, she would “bring him some weed.” (J.A. 302). Betty agreed to take over marijuana, and she “rolled him up two blunts.” (J.A. 302). She then took the marijuana to the officers surrounding the mobile home, but they refused it, telling her that “we can get him out without that.” (J.A. 303).

Eventually, Petitioner decided that “his friends [might have been] too scared to come because it was taking too long.” (J.A. 205). He “suggested that [the officers] get him two cigars and a bag of marijuana and have it delivered to his house.” (J.A. 205). The negotiator, Webb, agreed to deliver the marijuana if Petitioner released Mark or the children. (J.A. 207). Webb told Petitioner that he would bring marijuana “if he would give me a kid for a cigar and a kid for some marijuana. In other words, a trade.” (J.A. 209). Petitioner, however, “just became angry and threatened to kill those in the house” and hung up. (J.A. 209).

In a call at 6:23 a.m., Petitioner finally agreed to release Mark. (J.A. 211). Mark left the mobile home through the back door, where the SRT members picked him up and carried him to a waiting ambulance. (J.A. 152-53, 364). Shortly thereafter, Petitioner told Webb that he wanted his mother to deliver the marijuana and that he would allow her to take the children. (J.A. 212). Webb then arranged for Petitioner’s mother, Terra, to speak with him. (J.A. 213-14).

Terra pleaded with Petitioner to “come out” and “let the kids go.” (J.A. 260). Because she believed her son might kill himself, she focused their conversation on “just trying to convince him that . . . this [was] not how it ha[d] to end.” (J.A. 261). Petitioner agreed, and first retrieved the older child, who was asleep in his room, and then the younger child, who was also asleep. (J.A. 262). Petitioner brought the children to the back door of the home, where the officers retrieved them. (J.A. 153, 267-77). By this time, it was around 8:15 a.m. (J.A. 215).

After around two more hours of negotiations, Petitioner finally agreed to leave the mobile home. (J.A. 218-223). He walked out the front door holding the gun to his own head, telling the officers not to shoot him. (J.A. 370). Petitioner walked to his car parked in front of the home, got in, and began smoking some marijuana that he kept there. (J.A. 222, 372). He then attempted to drive off. Members of the SRT team immediately began shooting at the car's tires. (J.A. 134; 146; 373). Other officers quickly surrounded and immobilized the car with their own vehicles. (J.A. 125-26; 156-57; 377). The officers removed Petitioner from the car and arrested him. (J.A. 127; 386).

After the government presented its evidence at trial, Petitioner moved for judgment of acquittal on the kidnapping and § 924(c) charges, arguing the evidence failed to show that he used an instrumentality of interstate commerce in furtherance of the kidnapping. (J.A. 47-59; 428-36). The district court denied the motion, and the trial proceeded with Petitioner's evidence.

At the close of all the evidence, the court denied Petitioner's renewed motion for a judgment of acquittal and it denied a motion for a directed verdict. (J.A. 12; 557-58; 651). The jury found Petitioner guilty on all three counts. (J.A. 93; 647-48).

At sentencing, the district court imposed a judgment of 240 months' imprisonment on count one, with a concurrent sentence of 120 months' imprisonment on count three. On count two, the court imposed a consecutive sentence of 120 months' imprisonment, for a total term of imprisonment of 360 months. (J.A. 94-100). Judgment was entered on May 18, 2015. (J.A. 13). Petitioner

timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 101).

### **B. Court of Appeals Proceedings**

On appeal, the Fourth Circuit agreed with Petitioner that the charge of kidnapping could not support his conviction under 18 U.S.C. § 924(c). The Fourth Circuit therefore vacated Petitioner’s § 924(c) conviction and remanded the case to the district court for resentencing on that count. The Fourth Circuit rejected Petitioner’s argument, however, that there was insufficient evidence to support the kidnapping conviction and affirmed the judgment of the district court as to the kidnapping count. This petition followed.

### **THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW**

Petitioner argued to the Fourth Circuit that there was insufficient evidence to support his kidnapping conviction. The Court of Appeals rejected this argument and upheld the conviction and sentence. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court’s consideration.

### **REASONS FOR GRANTING THE PETITION**

The Court of Appeals erred in affirming the kidnapping conviction. Even taken in the light most favorable to the government, the evidence failed to show that Petitioner used an instrumentality of interstate commerce—specifically, a cell phone or a car—in furtherance of the kidnapping. Petitioner used neither a cell phone nor a vehicle to accomplish or further the goals of the kidnapping. Instead, the evidence showed that various persons spoke with Petitioner by cell phone to

convince him to release the hostages and to surrender. Likewise, Petitioner only used a car to attempt to flee the scene. Because Petitioner’s use of a cell phone and a car were merely incidental and did not further the offense, the evidence failed to show that the kidnapping was a federal, rather than a purely local, offense.

The federal kidnapping statute federalizes the crime of kidnapping where the victim:

is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense.

18 U.S.C. § 1201(a)(1).

Congress first enacted the legislation in 1932 in response to “an epidemic” of kidnapping, including the infamous abduction and murder of national hero Charles Lindbergh’s son. *Chatwin v. United States*, 326 U.S. 455, 462-63 (1946) (relating that the proponents of the kidnapping statute believed it necessary because “where victims were transported across state lines only the federal government had the power to disregard such barriers in pursuing the captors”).

In accordance with this concern over interstate transportation of victims, the kidnapping statute originally required, as an essential element of the offense, proof that the defendant “willfully transported the victim in interstate commerce.” *United States v. Wills*, 346 F.3d 476, 495 (4th Cir. 2003). In 2006, however, as part of the Adam Walsh Act, Congress expanded federal kidnapping to include intrastate activity when an “offender . . . uses . . . any . . . instrumentality of interstate . . .

commerce in committing or in furtherance of the commission of the offense.” 18 U.S.C. § 1201(a)(1); *United States v. Morgan*, 748 F.3d 1024, 1031 (10th Cir. 2014).

In expanding the statute, Congress wanted “to permit federal jurisdiction over intrastate kidnappings that resulted from Internet child predation.” Michele Martinez Campbell, *The Kids Are Online: The Internet, the Commerce Clause, and the Amended Federal Kidnapping Act*, 14 U. PA. J. CONST. L. 215, 239 (2011).

Thus, the federal kidnapping statute now provides two different bases for federal jurisdiction. Jurisdiction is established via the original method when the victim is “willfully transported in interstate or foreign commerce.” 18 U.S.C. § 1201(a)(1). Alternatively, the “offender-use provision” extends federal jurisdiction in cases where the kidnapper travels in or uses the channels or instrumentalities of interstate commerce to commit the kidnapping. *Id.*

Here, Petitioner did not use an instrumentality of interstate commerce to commit or further the offense. The only instrumentalities of interstate commerce used at all in this case were a cell phone and a car. However, neither instrument “furthered” the offense. Instead, the phone calls were initiated by law enforcement and focused on negotiating the release of the victims and Petitioner’s surrender. Nor was talking by cell phone the exclusive method of communication. The parties also spoke using landline phones, megaphones, and sometimes by simply shouting through the walls of the mobile home. Thus, the cell phone had no role in facilitating or furthering the kidnapping—every act Petitioner performed in committing the offense would still have occurred without the cell phone. Because

use of the cell phone was merely incidental to the commission of the crime, it cannot be said that Petitioner “used” the cell phone “in furtherance” of the offense.

Likewise, the car played no role in Petitioner’s commission of the offense. Petitioner only used a car to attempt to flee the scene. By that point, all of the victims had been released, and the kidnapping was over. Just as with the cell phone, Petitioner’s use of the car did not facilitate or further the kidnapping in any manner.

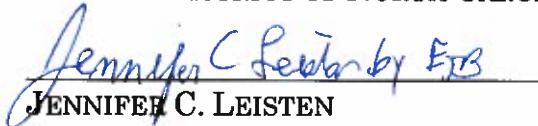
In sum, Petitioner never made use of an instrumentality of interstate commerce in planning or committing the kidnapping that occurred in this case. Any use that occurred was merely incidental and had no effect on the outcome of the events at issue. As such, Petitioner’s crime was a purely local offense, not a federal one. Because he did not commit federal kidnapping, the district court erred when it denied the motion for judgment of acquittal as to count one of the superseding indictment. The Court of Appeals likewise erred in affirming the conviction. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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