
RECORD NO. _____

In The
Supreme Court of the United States

JAMES STEPHEN THORPE, a/k/a J1,
Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals properly held that there exists an interstate commerce connection for a prosecution under 18 U.S.C. §§ 2 and 1951 (conspiracy to commit Hobbs Act robbery and Hobbs Act robbery) where the facts showed the defendant and others broke into the private home of an individual who worked for a business that transacted in interstate commerce and that the defendant did so based solely on his belief the individual may have brought money home from the business and stored it in the private home.

PARTIES TO THE PROCEEDINGS

James Stephen Thorpe is the Petitioner. The United States of America is the Respondent.

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**OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS
DELIVERED IN THE COURTS BELOW**

The published decision of the United States Court of Appeals for Fourth Circuit Court affirming Petitioner's convictions is included at A1.

BASIS FOR JURISDICTION IN THE SUPREME COURT

Petitioner, James Stephen Thorpe (Thorpe), requests the Court issue a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit entered 2 March 2020. The Fourth Circuit denied Thorpe's petition for rehearing en banc on 7 April 2020. The United States District Court for the Eastern District of North Carolina had jurisdiction under 18 U.S.C. § 3231. The United States Court of Appeals for the Fourth Circuit had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THE CASE

Supreme Court Rule 10(a):

a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

The Hobbes Act, 18 U.S.C. § 1951(a):

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

The federal aiding and abetting statute, 18 U.S.C. § 2:

- (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
- (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT OF THE CASE

On 16 March 2016, the United States government filed a criminal indictment in the Eastern District of North Carolina against Thorpe, his brother, and two codefendants alleging violations of 18 U.S.C. §§ 2, 1951, and 924(c) (aiding and abetting Hobbs Act robbery, Hobbs Act robbery, and use of a firearm during a crime of violence) (JA pp 37-42). On 29 November 2016, the United States District Court for the Eastern District of North Carolina (“the district court”), with the Honorable James C. Dever, III presiding, began a joint jury trial for Thorpe and his brother (JA pp 128-272). The government’s evidence tended to show the following.

Thorpe, his brother, and others put together a plan to rob a man named Mark Daye (JA p 423-440). According to a testifying codefendant, Thorpe targeted Daye because they believed Daye had money and owned some clubs (JA p 425). They solicited the help of a Durham County, North Carolina deputy sheriff, who ran Daye’s girlfriend’s license plate number and gave them her

address, with whom the defendants believed Daye lived (JA pp 430- 32).

On 15 March 2015, the group drove in three cars to Daye's girlfriend's apartment complex in Morrisville, North Carolina (JA pp 436-38). Everyone except Thorpe and other men jumped from the cars and surrounded Daye's adult son and escorted him to the front door of Daye's girlfriend's apartment at gunpoint (JA pp 440-42).

Inside the apartment Daye, his girlfriend, their three-year-old daughter, and the girlfriend's adult female cousin were having dinner (JA p 163). The girlfriend's cousin answered the door and opened it because she saw Daye's son through the peephole but did not see the group members with a gun to his head (JA p 163-64). The group members rushed inside with guns drawn and shouted for everyone to get on the floor (JA p 194). Thorpe and another man were on the phone with one of the intruders throughout the incident (JA p 445-47).

The intruders found \$5,000 at Daye's direction (JA p 170). However, they were dissatisfied with that amount because they

believed Daye gave up its location too quickly so they pressed him for the location of more money (JA p 170). The men threatened to drown Daye's daughter in the bathroom (JA pp 170-71). In addition, the intruders beat the adult cousin leaving her with bruises (JA pp 168-70). Daye got up and ran onto the balcony and jumped from the second floor to the ground below and was shot by one of the intruders while doing so (JA p 170-71).

After shooting Daye, the men left the apartment and jumped into a red Dodge Charger driven by another man (JA p 448-49). Thorpe drove away in one of the other cars (JA p 452). A short time later, they came to a traffic light at an intersection (JA p 451). Two police officers spotted the red Dodge Charger and approached it on foot with weapons drawn and told the occupants to freeze (JA p 453). The red Dodge Charger drove away quickly (JA p 452-53). One of the officers saw a gun in the back of the car and fired at the car as it drove away (JA p 253).

According to the testifying codefendant, when the police officers began to pursue the red Dodge Charger, Thorpe drove his car into the officers' path, which gave the red Dodge Charger time

to get away (JA p 253). The police officers were unaware of any connection between Thorpe's car and the red Dodge Charger so they drove around Thorpe's car and pursued the red Dodge Charger (JA pp 253-54). The police never found the red Dodge Charger that evening (JA p 256). The police were unaware at the time that the other two cars were also involved in the robbery so they got away as well (JA p 262-64).

The robbers got back together at a house in Durham, North Carolina (JA pp 456-57). Thorpe split up the \$5,000 in cash amongst the group members (JA pp 457-58). The testifying codefendant testified that he did not get a cut of the money (JA p 463).

The Government's evidence concerning interference with commerce was limited to the testimony of Joseph Bartholomew (JA pp 621-41). Bartholomew testified that he owned and operated a club called Vegas Nightlife in Raleigh, North Carolina along with a partner (JA pp 621-23). Bartholomew was responsible for the day-to-day operations while his partner and

Daye acted as the club's promoters and Daye scheduled entertainment acts (JA pp 624-25).

Bartholomew testified that the club regularly scheduled bands that were out of state (JA p 625). He also testified that the club sold alcohol, which it purchased via Western Union from the North Carolina state-run liquor stores (JA p 625-27). He also testified that the club had made an initial purchase of sound and lighting equipment that was shipped from New York to Raleigh (JA pp 627- 28).

In March of 2015, Bartholomew became aware Daye was shot during a home invasion (JA p 629). Bartholomew visited Daye in the hospital (JA p 630). Daye missed work due to his injuries and did not return to working in the club (JA pp 630, 636-37). The Government presented no evidence that Daye's decision not to return to the club was based on the home invasion or his injuries (JA pp 621-42). The mother of Daye's child testified that they were in debt during the time Daye was involved with the club (JA pp 195-96).

Bartholomew testified that the club's customer attendance diminished after Daye's shooting (JA pp 630-32). However, Bartholomew did not testify how much the attendance was down after the shooting or what difference, if any, that made to the profitability of the club (JA pp 621-42). Bartholomew did not testify to any financial statements or specific financial performance of the club and the government failed to offer any evidence concerning any specific pecuniary loss (JA pp 621-42). Bartholomew did not testify that the club experienced any disruptions in its regularly scheduled operating hours (JA pp 621-42). Bartholomew had the responsibility to ensure that the club was staffed and open for business (JA p 624).

On direct examination, the government asked the following question: "And to be clear, is it fair to say that Vegas Nightlife's closing was not a direct result of Mark Daye being shot?" (JA p 631) Bartholomew answered: "That's correct." (JA p 631) When asked why he closed the club, Bartholomew said he closed it fifteen months after the shooting because of a dispute between himself and his partner (JA p 632). Bartholomew testified that

his partner had developed legal issues involving drug trafficking and Bartholomew did not want to be in business with someone like that (JA p 632). After Bartholomew closed the club, he obtained another lease with the landlord and opened a new club at the same location (JA p 631). The new club went on to expand its operations at the same location (JA p 631).

At some point after the robbery, Bartholomew learned Daye was also involved in the illegal drug business (JA p 638). Bartholomew testified that had the club remained open, he would not have taken Daye back as a promoter because of his illegal drug activities (JA p 638).

At the close of the government's evidence, both defendants made a motion for acquittal and argued that the government had failed to produce sufficient evidence of an interstate commerce connection (JA pp 948-56). The district court denied the motion (JA pp 954-55). The jury subsequently convicted both defendants on all counts (JA pp 1145-61).

On 5 April 2017, the district court sentenced Thorpe to a total prison term of 480 months (JA pp 28-29). The district court

also ordered him to pay \$5,000 in restitution (JA p 29). Both Thorpe and his brother appealed (JA pp 1306-07, 1308-09). On appeal, they both argued a lack of interstate commerce connection to support federal prosecution of the robbery.

On 2 March 2020, the Fourth Circuit Court of Appeals issued a per curiam unpublished opinion affirming all convictions. On the interstate commerce issue, the panel noted that the evidence established that the club was engaged in interstate commerce and wrote as follows:

Here, the evidence established that Appellants targeted the victim, a night club promoter, because they believed that he took money from the night club home, instead of to a bank. Thus, the fact that the Government did not establish the nature of the \$5,000 taken from the victim is not relevant, because Appellants believed that the victim had money from the club in his possession. Accordingly, we conclude that the Government established the interstate commerce element.

(Slip Opinion p 4) The panel cited *United States v. Taylor*, 754 F.3d 217, 225 (4th Cir. 2014) (“Under the targeting theory, a defendant who robs a victim in the belief that he will recover the proceeds of an enterprise engaged in interstate commerce will not fortuitously escape prosecution under the Hobbs Act because his

target did not possess those proceeds at the precise time of the robbery.”), *affirmed*, ___ U.S. ___, 136 S. Ct. 2074, 195 L. Ed. 2d 456 (2016), and *United States v. Wang*, 222 F.3d 234, 239-40 (6th Cir. 2000) (suggesting “that the Government might make such a showing by demonstrating that the defendant knew of or was motivated by the individual victim’s connection to interstate commerce”).

ARGUMENT

THE TARGETING RULE TO SUPPORT AN INTERSTATE COMMERCE CONNECTION IN A HOBBS ACT ROBBERY OF AN INDIVIDUAL IN A PRIVATE RESIDENCE MUST REQUIRE MORE THAN JUST THE TARGETING OF THE VICTIM FOR PURPOSES OF STEALING THE ASSETS OF A BUSINESS THAT OPERATES IN INTERSTATE COMMERCE.

As far back as 1990, the Fourth Circuit Court of Appeals has held that taking money from an individual is analyzed differently than the taking of money from a business for the purpose of establishing an interstate commerce connection to establish federal jurisdiction. *See United States v. Buffey*, 899 F.2d 1402, 1406 (1990) (“Extorting money to be devoted to personal use from

an individual does not affect interstate commerce.”) Therefore, “to satisfy the Act, the government still must show that an effect on interstate commerce is reasonably probable.” *Id.* at 1404.

Here, the Fourth Circuit relied on *Taylor* to support its conclusion that Thorpe’s targeting of Daye in an attempt to steal the club’s assets was sufficient to satisfy the interstate commerce connection in a Hobbs Act robbery (Slip Opinion p 4). However, *Taylor* was a case involving a defendant who targeted the victim because the victim was a drug dealer. *Taylor*, 754 F.3d at 220. In affirming *Taylor*, this Court did not rely on the targeting theory to support an interstate commerce connection for a Hobbs Act robbery. Instead, the Court relied on the fact that the United States has jurisdiction over the sale of illegal drugs. *Taylor v. United States*, ___ U.S. ___, ___, 136 S. Ct. 2074, 2080, 195 L. Ed. 2d 456, 465 (2016) (“the purely intrastate production and sale of marijuana is commerce over which the Federal Government has jurisdiction.”) Thorpe’s case was not a drug case.

Additionally, while there may have been evidence that Thorpe targeted Daye for the purpose of removing from his

custody a business's assets, there was no proof that the \$5,000 the robbers took from Daye in his home actually belonged to the business or had any other interstate commerce connection, like deprivation of the business due to the crime.

Other circuits have relied on the targeting theory to support the interstate commerce connection in a Hobbs Act robbery but these circuits have relied on evidence showing a taking of actual business assets or some other connection to interstate commerce in addition to the targeting.

Second Circuit

The Second Circuit has held that instances where a robbery or extortion of an employee of a business engaged in interstate commerce would likely support Hobbs Act jurisdiction include showing that the victim was targeted because of her status as an employee at a company participating in interstate commerce or that the crime targeted the assets of a business rather than an individual. *United States v. Perrotta*, 313 F.3d 33, 37-38 (2nd Cir. 2002) (internal citations omitted). However, the 2nd Circuit

further held that “[m]erely showing employment with a company that does business in interstate commerce, without more, stretches the Hobbs Act too far.” *Id.* at 38.

Third Circuit

The Third Circuit adopted a targeting theory to support the interstate commerce connection in a Hobbs Act Robbery but the facts of their case showed that the money obtained during the home robbery was actually from the business. *United States v. Powell*, 693 F.3d 398, 400 (3rd Cir. 2012).

Sixth Circuit

In *Wang*, the evidence showed that the defendant robbed the two owners of a restaurant who purchased their meats from out-of-state. *Wang*, 222 F.3d at 236. The robbery took place in the victims’ home almost immediately after they closed the restaurant for the day and took home with them \$1,200 from the restaurant’s cash register. *Id.* The defendant was a former cook with the restaurant. *Id.* The defendant was caught, charged with Hobbs Act robbery, convicted,

and appealed. *Id.* at 236-37. On appeal, he argued that no interstate commerce connection existed on these facts. *Id.* at 237. The Sixth Circuit, like other circuits, had historically established a rather low threshold for establishing an interstate commerce connection in a Hobbs Act robbery. *Id.* Nonetheless, the Sixth Circuit agreed with the defendant and reversed the Hobbs Act robbery conviction for insufficient evidence of an interstate commerce connection. *Id.* at 240. The Sixth Circuit held that where “the criminal act is directed at a private citizen, the connection to interstate commerce is much more attenuated.” *Id.* at 328.

The Sixth Circuit had previously held that where a defendant has actual knowledge that the money he seeks would be obtained through interstate commerce, the interstate commerce connection is established. *United States v. Mills*, 204 F.3d 669, 670 (6th Cir. 2000). The *Wang* opinion does not specifically indicate that the defendant targeted the victims to try to obtain the restaurant’s assets. Thus, it appears that the Sixth Circuit was signaling that if the facts had affirmatively shown a targeting, the targeting *coupled* with the taking of actual restaurant assets would have created the interstate

commerce connection. The Sixth Circuit further noted that the interstate commerce connection cannot be “fortuitous or speculative.” *Id.* at 239-40.

Ninth Circuit

The Ninth Circuit has narrowed the reach of the Hobbs Act by requiring a stricter test for prosecutions that involve the robbery of an individual. *United States v. Lynch*, 282 F.3d 1049, 1053 (9th Cir. 2001) (“[T]he taking of small sums of money from an individual has its primary and direct impact only on that individual and not on the national economy.”). When a robbery of an individual is alleged to have had an indirect effect on interstate commerce, the Hobbs Act only applies if (1) the acts deplete the assets of an individual who is directly and customarily engaged in interstate commerce; (2) the acts cause or create the likelihood that the individual will deplete the assets of an entity engaged in interstate commerce; or (3) the number of individuals victimized or the sum at stake is so large that there will be some cumulative effect on interstate commerce. *Id.* The 9th Circuit subsequently

held that their *Lynch* decision is inapplicable to cases where the defendant targets a drug trafficker, which comports with this Court's decision in *Taylor*. *United States v. Rodriguez*, 360 F.3d 949, 955-956 (9th Cir. 2004).

Eleventh Circuit

The Eleventh Circuit's adoption of the targeting theory involved an attempted robbery from a private residence that showed that if the robbery had been successful, it would have delayed the business's ability to acquire supplies and that the perpetrators traveled from California to Florida and communicated with each other across state lines in addition to targeting the victim to obtain a business's assets. *United States v. Nghia Le*, 256 F.3d 1229, 1236-1237 (11th Cir. 2001); *see also United States v. Diaz*, 248 F.3d 1065, 1089 (11th Cir. 2001) (“the Court is convinced by the evidence presented at trial that appellants targeted the Martins because of their interest in Rosa Medical Center.”) The Eleventh Circuit thus seems to agree with the Fourth Circuit that targeting based on an attempt to acquire

the proceeds of an interstate commerce business alone supports the interstate commerce connection in the robbery of an individual.

Fourth Circuit

With Thorpe's case, the Fourth Circuit has adopted the Eleventh Circuit's rule that targeting an individual based on a speculative belief he may have the proceeds from an interstate commerce business in his private residence is sufficient to establish an interstate connection for a Hobbs Act robbery. There was no evidence that Thorpe knew the money he sought was the business's money. There was no evidence that it actually was the business's money. There was no evidence of a connection between the business's subsequent decline and the robbery of the victim. Any connection was speculative. The Fourth Circuit thus allows the government to establish the interstate commerce connection based on the defendant's intent alone.

This means there is a split among the circuits as to how much evidence is needed to establish the interstate connection in a Hobbs

Act robbery. Thorpe asks the Court to take up his case and rule that to establish an interstate connection in a Hobbs Act robbery where the robbery is of an individual in his home, the government must prove more than a targeting of the victim to obtain business assets that may or may not be in the home and may or may not be the business's assets. Nearly all assets are connected to interstate commerce in some way. To allow a speculative targeting alone to prove an interstate commerce connection for a Hobbs Act robbery opens the door to the federal government being able to prosecute any and all robberies of individuals in their homes. The government should have to produce evidence over and above a speculative targeting of a business's assets to show the interstate commerce connection in a Hobbs Act robbery.

REASON FOR GRANTING THIS PETITION

Without this Court taking up and deciding this issue, the circuits will remain split on the amount of evidence necessary to establish an interstate commerce connection in a Hobbs Act robbery. The Fourth and Eleventh Circuits will allow the

government to establish an interstate commerce connection in any robbery of an individual in his home provided that the robber hoped to find the assets from a business transacting in interstate commerce. That is a low threshold. This approach will allow the government to prosecute many more robberies of individuals in their homes than Congress intended. This Court should issue its writ of certiorari for this case and hear arguments on whether the Fourth Circuit, and perhaps other circuits, has over-extended the government's reach in the prosecution of robberies of individuals in their homes.

CONCLUSION

For the foregoing reasons, Thorpe respectfully requests that this Court issue its writ of certiorari and take up Thorpe's case.

This 22nd day of May, 2020.

Respectfully submitted,



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