

No. 21-5028

IN THE SUPREME COURT OF THE UNITED STATES

DAVID COPES, AKA DAVID HENDERSON-COPES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 6-8) that robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" within the meaning of 18 U.S.C. 924(c) (3) (A). The court of appeals correctly rejected that contention, and the petition for a writ of certiorari should be denied.

1. A conviction for Hobbs Act robbery requires the "unlawful taking or obtaining of personal property" from another "by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property." 18 U.S.C. 1951(b) (1). For the reasons stated in the government's brief in

opposition to the petition for a writ of certiorari in Steward v. United States, No. 19-8043 (May 21, 2020), cert. denied, 141 S. Ct. 167 (2020), Hobbs Act robbery qualifies as a “crime of violence” under Section 924(c)(3) because it “has as an element the use, attempted use, or threatened use of physical force against the person or property of another,” 18 U.S.C. 924(c)(3)(A). See Br. in Opp. at 6-12, Steward, supra (No. 19-8043).¹

Petitioner contends (Pet. 7-8) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(A) on the theory that Hobbs Act robbery does not require a defendant to use or threaten to use “violent” force and may be accomplished by threats to harm “intangible” property. Those contentions lack merit for the reasons explained at pages 8 to 12 of the government’s brief in opposition in Steward, supra (No. 19-8043). And every court of appeals to have considered the issue, including the court below, has recognized that Section 924(c)(3)(A) encompasses Hobbs Act robbery. See id. at 7; Pet. App. 3-5; see also, e.g., United States v. Walker, 990 F.3d 316, 325-326 (3d Cir. 2021), petition for cert. pending, No. 21-102 (filed July 22, 2021); United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018); Pet. 6 & n.1 (acknowledging the circuit courts’ consensus).

¹ We have served petitioner with a copy of the government’s brief in opposition in Steward, which is also available from this Court’s online docket.

Petitioner alternatively contends (Pet. 8) that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c) (3) (A) on the theory that it can be accomplished by an "unintentional application of force." Petitioner is incorrect. The courts of appeals that have addressed the issue have recognized that Hobbs Act robbery -- which requires the unlawful taking or obtaining of property by means of actual or threatened force or violence -- requires the defendant to act either intentionally or knowingly. See, e.g., United States v. Howard, 650 Fed. Appx. 466, 468 (9th Cir. 2016). And multiple courts of appeals, including the court below, have similarly recognized such a requirement in the analogous federal bank robbery offense under 18 U.S.C. 2113(a). See, e.g., United States v. Carr, 946 F.3d 598, 607 (D.C. Cir. 2020) ("[T]he federal bank robbery statute applies only if the defendant had knowledge that his conduct was intimidating."); United States v. Deiter, 890 F.3d 1203, 1213 (10th Cir.), cert. denied, 139 S. Ct. 647 (2018); United States v. Wilson, 880 F.3d 80, 87 (3d Cir.), cert. denied, 138 S. Ct. 2586 (2018); United States v. McNeal, 818 F.3d 141, 155-156 (4th Cir.), cert. denied, 137 S. Ct. 164 (2016).

2. This Court has consistently declined to review petitions for a writ of certiorari asserting that Hobbs Act robbery is not a crime of violence under Section 924(c) (3) (A), see Br. in Opp. at 7-8 & n.1, Steward, supra (No. 19-8043), including in Steward, 141 S. Ct. 167 (2020), and in other cases. See, e.g., Fields v. United

States, 2021 WL 2519341 (Jun. 21, 2021) (No. 20-7413); Thomas v. United States, 2021 WL 2519337 (Jun. 21, 2021) (No. 20-7382); Walker v. United States, 2021 WL 2519317 (June 21, 2021) (No. 20-7183); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); Becker v. United States, 141 S. Ct. 145 (2020) (No. 19-8459); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188). The same course is warranted here.

This Court has granted review in United States v. Taylor, No. 20-1459 (cert. granted July 2, 2021), to determine whether attempted Hobbs Act robbery qualified as a "crime of violence" under Section 924(c)(3)(A). Petitioner asks this Court (Pet. 5-6) to hold his petition pending the Court's decision in Taylor, but that request is misplaced because petitioner would not benefit from a decision in favor of the respondent in Taylor. Even if this Court were to conclude that attempted Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A), the Fourth Circuit in Taylor reaffirmed that completed Hobbs Act robbery qualifies as a "crime of violence," see United States v. Taylor, 979 F.3d 203, 207-208 (2020); the respondent in Taylor does not argue otherwise, see Br. in Opp. 11-17, United States v. Taylor, No. 20-1459 (May 21, 2021); and the court below reached the same conclusion after Taylor, see Walker, 990 F.3d at 325-326. Accordingly, no reasonable prospect exists that this Court's decision in Taylor will affect the outcome of this case, and it

would not be appropriate to hold this petition pending the disposition of Taylor.²

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

AUGUST 2021

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.