
No. _____

In the

Supreme Court of the United States

January Term, 2021

TERRELL HUNTER,
Petitioner.

vs.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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Question Presented

Did the decisions of the district court and the court of appeals, that the commerce element of the Hobbs Act is satisfied by the robbery of *moneys intended to be used* to purchase drugs, unjustifiably expand the scope of this Court's holding in *Taylor v. United States*, 136 S. Ct. 2074, 2079, 195 L.Ed.2d 456 (2016), that the element is satisfied by the robbery of *drugs or drug proceeds*, and should this Court grant certiorari in order to determine the important question of federal law of whether the holding of *Taylor* goes so far as to encompass the robbery of moneys intended to be used to purchase drugs?

List of Parties

There were no corporate parties below. Terrell Hunter's co-defendants in the district court were Gerund Mickens, Harold Cook, Jesus Ashanti and Douglas Lee..

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Petitioner Terrell Hunter respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit dated July 26, 2021.

Opinions Below

The decision of the Court of Appeals (the “Summary Order”) is an unpublished summary order and is set forth in the Appendix at A1. The ruling of by the district court denying the motions for judgment of acquittal and new trial by Hunter, Mickens and Cook (the “Ruling”) is published at *United States v. Cook, et al.*, 2019 WL 4247938 (D. Conn. Sept. 6, 2019). A26.

Jurisdiction

The summary order of the Court of Appeals was announced on July 26, 2021. A1. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The basis for subject matter jurisdiction in district court was 18 U.S.C. §3231 (jurisdiction over offenses against the United States). The basis for the jurisdiction of the court of appeals was 28 U.S.C. § 1291 (appeals from final judgments of district courts), Rule 4(b), Fed. R. App. Proc. (appeals from criminal convictions), 18 U.S.C. § 3557 and 18 U.S.C. § 3742 (appeals from sentences).

Constitutional and Statutory Provisions Involved

18 U.S.C. § 1915 (Hobbs Act Robbery) provides, in relevant part, that a person commits Hobbs Act Robbery when he:

in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery. . . 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 [commit robbery].

18 U.S.C. § 1915(b)(1) defines “robbery” as

the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force[.]

Statement of the Case

Terrell Hunter, along with Gerund Mickens and Harold Cook, were found

guilty after a jury trial in the District of Connecticut on charges arising out of the robbery, kidnapping, and murder of Charles Teasley in January 2009. The government contended that Douglas Lee had lured Teasley to drug sale and that Hunter, Mickens, Cook and Jesus Ashanti had kidnapped, robbed and murdered him. A 28. Lee was tried separately and the district court granted his motion for judgment of acquittal. Ashanti pleaded guilty and testified against Hunter, Mickens and Cook. The jury found the Hunter, Mickens and Cook guilty:

in count one, of kidnapping resulting in the death of a person, in violation of 18 U.S.C. §§ 1201(a)(1) and 2; and

in count three, of the use of a firearm to commit murder in the course of a Hobbs Act robbery, in violation of 18 U.S.C. § 924(j)(1) and 2.¹

The district court sentenced each defendant to life imprisonment.

Hunter (as well as Mickens and Cook) appealed to the Court of Appeals for the Second Circuit. Each joined in the arguments of the others.

First they argued that their convictions should be reversed because of the district court's refusal to dismiss the indictment on the basis of pre-indictment delay. They contended that the lengthy interval between Teasley's kidnapping, robbery, and murder in January 2009 and the return of the indictment eight years later, in March 2017, violated their Due Process rights and required dismissal of all charges. They pointed out that they had suffered significant prejudice because during the period of pre-indictment delay a key witness, Desmond Wright, had died, and because notes taken during an April 2011 interview with cooperator

¹Count two was dismissed by agreement of the parties.

Jesus Ashanti had been lost.

The court of appeals, like the district court, rejected these arguments. The court recognized that the pre-indictment period of investigation was “indisputably long.” Summary Order at 4, A 4. It held, however, that Hunter, Mickens and Cook had failed to demonstrate that the delay in seeking an indictment was improperly motivated or that the defendants were materially prejudiced by the delay. Summary Order at 4, A 4.

Second, Hunter, Mickens and Cook argued that the evidence, which relied heavily on the problematic testimony of a cooperating witness, Jesus Ashanti, was insufficient to support the convictions. After the return of the jury’s guilty verdicts, the defendants had moved under Rule 29 of the Federal Rules of Criminal Procedure for judgments of acquittal or, in the alternative, under Rule 33 for a new trial. The district court rejected the motions, giving the defense arguments what the court of appeals described as “careful consideration in a comprehensive and methodical written opinion.” Summary Order at 6, A 6; *see A26* (district court ruling).

On appeal, Hunter, Mickens and Cook renewed their challenges to the jury’s verdict, focusing their argument on the testimony of Jesus Ashanti, who, the court of appeals recognized, was “without a doubt the cornerstone of the prosecution’s case.” Summary Order at 6, A 6. The defendants argued that Ashanti’s testimony was incredible on its face and defied physical realities, warranting either reversal or a new trial under the Second Circuit standards established in *United States v.*

Truman, 688 F.3d 129, 139 (2d Cir. 2012).

The Court of Appeals, recognizing the inconsistencies in Ashanti's testimony, nevertheless held that a reasonable jury had a sufficient evidentiary foundation based on the totality of the evidence to credit Ashanti's claim that Hunter, Mickens and Cook had kidnapped, robbed and murdered Teasley and that the defendants had been provided adequate opportunity to challenge Ashanti's credibility, test the adequacy of the police investigation, and suggest alternative narratives of culpability. Summary Order at 10, A 10.

Third, Hunter Mickens and Cook argued that the government had failed to establish the necessary interstate nexus necessary to establish a Hobbs Act robbery. Recognizing that this Court has held that it is enough that a defendant stole or attempted to steal drugs or drug proceeds, *Taylor v. United States*, 136 S. Ct. 2074, 2079 (2016), the defendants contended that no drugs or proceeds had been involved in the robbery.

The court of appeals pointed out that the defendants had lured Teasley to a prospective drug sale because they anticipated that he would be carrying moneys that he intended to use to purchase drugs. The court of appeals also noted that the defendants had stolen a safe that they believed contained the proceeds of the sale of Teasley's BMW, and that Teasley had purchased the BMW with drug proceeds that he had stolen from other drug dealers. Second Circuit precedent established that even the theft of an empty safe was sufficient to establish the interstate nexus established by the Hobbs Act. *United States v. Lee*, 834 F.3d

145, 154-55 (2d Cir. 2016).

Fourth, Hunter, Mickens and Cook argued that *Brady v. Maryland*, 373 U.S. 83 (1963) was violated by the failure of investigating agents to produce and provide notes concerning a crucial meeting during which the cooperating witness Ashanti admitted that he had falsely accused an innocent man of participating in the murder. The court of appeals, relying on Second Circuit precedent, *see United States v. Rodriguez*, 496 F.3d 221, 224 (2d Cir. 2007), held that *Brady* established no obligation on governmental agents to take notes during witness interviews, and that the defendants had demonstrated insufficient prejudice to justify a reversal. Summary Affirmance at 14, A 14.

Fifth, Mickens argued that the district court had placed prejudicial restrictions on his final argument. The court of appeals held that the district court enjoyed broad discretion in controlling summations and that the curtailment of Mickens' closing did not cause substantial prejudice. Summary Affirmance at 16, A 16.

Sixth, Hunter, Mickens and Cook argued that they were entitled to a new trial because of governmental misconduct. They complained that:

the government had impermissibly bolstered the testimony of its cooperator Ashanti by misleading testimony concerning how Ashanti's admission that he had accused an innocent man had come about;

the government had impermissibly vouched for Ashanti's truthfulness;

the district court had erroneously admitted evidence of other acts to establish the defendants' bad characters, in violation of Rule 404(b) of the Federal Rules of Evidence;

the government had during final argument to shift the defendants the obligation to come forward with an alibi defense;

the government had wrongfully invited the jury to speculate about inadmissible evidence and accused the defendants of hiding relevant evidence from the jury.

The Court of Appeals held that any impropriety was marginal and did not prejudice the defendants. Summary Affirmance at 16-25, A 16-25.

Statement of Facts

At trial, the government introduced evidence that on the night of January 9, 2009, Teasley received a phone call from Lee, and the two set up a drug transaction at which Teasley would buy cocaine from Lee. At around 9:00 p.m., Teasley took \$1,100 from his girlfriend Kim Brookens' purse and left the home he and Brookens shared in West Hartford. Teasley left in his mother's car, an Acura TL, and was planning to bring his grandmother to work and meet Lee for the transaction. Ruling at 2, A27,

Shortly after Teasley left the house, Brookens received a call from him, asking that she bring his small safe, where he kept money and drugs, downstairs. Brookens retrieved the safe and gave it to a tall, thin, dark-skinned black man, who was wearing all black and a black face mask, standing at the front door. While doing so, she saw the Acura TL parked on the street in front of her house, although she could not see who was inside it. *Id.* at 3, A28.

Teasley did not pick up his grandmother from work, nor did he answer Brookens' multiple phone calls. Concerned, Brookens called Teasley's friends

and relatives in search of him, and on January 10, 2009, reported Teasley missing to the West Hartford Police Department. *Id.*

Teasley's body was found by his friend Desmond Wright on January 12 in the back seat of the Acura TL, which was parked on Colebrook Street in Hartford. Teasley's hands were bound behind his back with zip ties and he had been shot multiple times in the head. *Id.*

Two years later, in 2011, Ashanti, who by then was incarcerated for unrelated crimes, contacted law enforcement and implicated himself, Cook, Mickens, Hunter, and Lee (among others) in Teasley's murder. Ruling at 3, A28. Ashanti claimed that Lee set up a drug deal with Teasley and when Teasley arrived at the specified location, he was ambushed by Cook, Mickens, Hunter, and Ashanti. They kidnapped Teasley by binding his hands and forcing him into the back of his car. Cook, Mickens, Hunter, and Ashanti then assaulted Teasley, forced him to get the safe from Brookens, and then murdered him by shooting him in the head at close range. *Id.*

The defense contended that Ashanti's testimony was incredible on its face and defied physical realities. Ruling at 5, A30. During his initial meeting with investigators, Ashanti had purposefully implicated an innocent man in the murder. Ruling 9, A34. His many statements to investigators were full of contradictions, Ruling at 10, A35. He had lied repeatedly on other, unrelated occasions. Ruling at 11, A 36. His description of the kidnapping, robbery and murder was, the defense argued, contradicted by forensic evidence. *But see* Ruling at 12, A37

(forensics corroborated many aspects of Ashanti testimony), 13, A38 (Ashanti, Hunter and Mickens could not be eliminated as contributors to DNA found at the scene).

Reason for Granting the Writ

The decisions of the district court and the court of appeals, that the commerce element of the Hobbs Act is satisfied by the robbery of moneys intended to be used to purchase drugs, unjustifiably expand this Court's holding in *Taylor v. United States*, that the element is satisfied by the robbery of drugs or drug proceeds, and this Court should grant the petition in order to determine the important question of federal law of whether the holding of *Taylor* goes so far as to encompass the robbery of moneys intended to be used to purchase drugs.

There was a significant question in the trial evidence as to the nature of what had been stolen from Teasley.

When Lee had called Teasley offering a cocaine deal, Teasley had taken \$1,100 from his girlfriend's purse. Ruling at 2, A27. His girlfriend had a legitimate job as a paralegal at a large Hartford firm, so the \$1,100 that Teasley took from her purse was not drug proceeds. It was, however, as the district court found, money that Teasley intended to use to purchase drugs. Ruling at 15, A40.

What the stolen safe contained was unclear. A few months before he was killed, Teasley, with Desmond Wright had robbed Jamaican marijuana dealers. They had gotten way with three duffel bags full of marijuana and \$100,000. This \$100,000 could well have been the proceeds of marijuana dealing, but it also could have been, like the money Teasley was carrying on the night he was killed,

moneys that the Jamaicans had collected from legitimate sources that were intended to purchase more marijuana. Or the money could have come from some other source. The identity of the Jamaicans was unknown and they did not testify at trial.

Teasley had used his share of the robbery loot to purchase an expensive BMW. His girlfriend feared that the luxurious vehicle would draw the Jamaicans' attention (and wrath) to Teasley and she persuaded him to sell it. On the night of the murder, the BMW was at a local shop being offered for sale. Teasley's girlfriend did not know whether Teasley had already sold the car and received the proceeds, or whether he had received a partial payment from the shop in advance of the shop's selling the car on his behalf, or whether he was not expecting any payment until the shop had consummated a sale. A12. Given that Teasley had been required to take \$1,100 from his girlfriend's purse in order to make the cocaine purchase, it seems unlikely that he had cash inside the safe.

The evidence was insufficient to establish with certainty what was in the safe, What the evidence did establish was that what *had* been stolen was money intended to be used to purchase drugs.

The district court held and the court of appeals affirmed that the theft of moneys that are intended to purchase illegal drugs satisfies, as a matter of law, and without more, the Hobbs Act element that a robbery affect commerce or the movement of any article or commodity in commerce.

The district court and court of appeals relied upon this Court's holding that

the Hobbs Act “reaches any obstruction, delay, or other effect on commerce, even if small, and the Act’s definition of commerce encompasses ‘all … commerce over which the United States has jurisdiction.’” *Taylor v. United States*, 136 S. Ct. 2074, 2079, 195 L.Ed.2d 456 (2016) (quoting 18 U.S.C. § 1915(b)(3)).

In *Taylor*, this Court held that “if the Government proves beyond a reasonable doubt that a robber targeted a marijuana dealer’s drugs or illegal proceeds, the Government has proved beyond a reasonable doubt that commerce over which the United States has jurisdiction was affected.” *Taylor*, 136 S. Ct. at 2080-81. The Court made clear that “[o]ur holding today is limited to cases in which the defendant targets drug dealers for the purpose of stealing *drugs or drug proceeds*. We do not resolve what the Government must prove to establish Hobbs Act robbery where some other type of business or victim is targeted.” *Taylor*, 136 S. Ct. at 2082 (emphasis added).

The district court held, and the court of appeals affirmed, that, in light of the broad nature of the Hobbs Act and this Court’s holding in *Taylor*, the robbery of money that the defendants knew was intended to purchase drugs (which the court described as money intended to *become* drug proceeds, but for the defendants’ interruption of the transaction) fell within *Taylor*’s holding that the robbery of drug proceeds violates the Hobbs Act.

The *Taylor* opinion nine times mentions “drug proceeds”; it nowhere mentions moneys intended to purchase drugs.

The decisions of the district court and the court of appeals – that the Hobbs

Act's commerce element is satisfied by the robbery of moneys intended for the purchase of drugs – unjustifiably expand the holding of *Taylor* and go far in bringing closer the day when all local robberies will fall within the scope of the Hobbs Act. The strong-arm theft by one teenager of another on his way to purchase marijuana from a local dealer would, consistent with the decisions in this case, constitute a Hobbs Act robbery, yet the federal punishing of such a robbery would seem to have no direct relation to the regulation of interstate commerce and would not seem to be "'necessary and proper for carrying into Execution' Congress' power to regulate commerce." Art. I, § 8, cl. 18.

Because the district court and court of appeals have decided an important issue in a way that significantly but mistakenly expands this Court's decision in *Taylor*, the Court should grant certiorari to decide this important federal question.

Conclusion

For the reasons set forth above, the petitioner, Terrell Hunter, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the

Court of Appeals for the Second Circuit.

Respectfully submitted,

/s/

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