

No. 21-8199

IN THE SUPREME COURT OF THE UNITED STATES

YURI CHACHANKO, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether aiding and abetting robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), is a "crime of violence" under 18 U.S.C. 924(c) (3) .

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

United States v. Sam, No. 06-30186 (Apr. 18, 2007)

United States v. Chachanko, No. 06-30331 (Apr. 18, 2007)

United States v. Lynch, No. 17-35794 (Mar. 15, 2022)
(consolidated appeal)

United States v. Wright, No. 17-35795 (Mar. 15, 2022)
(consolidated appeal)

United States v. Kraus, No. 17-36003 (Mar. 15, 2022)
(consolidated appeal)

United States v. Sam, No. 17-36004 (Mar. 15, 2022)

United States v. Chachanko, No. 17-36007 (Mar. 15, 2022)

Perez v. United States, No. 18-35070 (Mar. 15, 2022)
(consolidated appeal)

United States v. Acton, No. 18-35087 (Mar. 15, 2022)
(consolidated appeal)

United States District Court (D. Mont.):

United States v. Lynch, No. 99-cr-18 (Aug. 1, 2000)

United States v. Sam, No. 05-cr-52 (Mar. 13, 2006)

United States v. Chachanko, No. 05-cr-52 (May 24, 2006)

United States v. Perez, No. 06-cr-26 (Oct. 13, 2006)

United States v. Kraus, No. 08-cr-14 (June 2, 2009)

United States v. Wright, No. 11-cr-17 (Nov. 4, 2011)

United States v. Acton, No. 12-cr-17 (Nov. 8, 2012)

Wright v. United States, No. 16-cv-85 (July 31, 2017)

Lynch v. United States, No. 16-cv-156 (July 31, 2017)

Sam v. United States, No. 16-cv-89 (Nov. 29, 2017)

Kraus v. United States, No. 16-cv-90 (Nov. 29, 2017)

Chachanko v. United States, No. 16-cv-96 (Nov. 29, 2017)

Perez v. United States, No. 16-cv-100 (Nov. 29, 2017)

Acton v. United States, No. 16-cv-77 (Dec. 7, 2017)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1c-4c) is not published in the Federal Reporter but is available at 2022 WL 796337. The orders of the district court (Pet. App. 1a-18a, 1b-18b) are not published in the Federal Supplement but are available at 2017 WL 5897013 and 2017 WL 5894531.

JURISDICTION

The judgment of the court of appeals was entered on March 15, 2022. The petition for a writ of certiorari was filed on June 13, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following guilty pleas in the United States District Court for the District of Montana, petitioners each were convicted of conspiring to commit robbery in violation of the Hobbs Act, 18 U.S.C. 1951; Hobbs Act robbery, in violation of 18 U.S.C. 1951; and using a firearm during a crime of violence, in violation of 18 U.S.C. 924(c). C.A. App. 162, 277; see id. at 273-274. The district court sentenced petitioner Chachanko to 219 months of imprisonment, to be followed by five years of supervised release, and petitioner Sam to 221 months of imprisonment, to be followed by five years of supervised release. C.A. App. 163-164, 278-279. The court of appeals affirmed. 2007 WL 1182478. In 2016, both petitioners filed motions for postconviction relief under 28 U.S.C. 2255. D. Ct. Doc. 91 (June 20, 2016); D. Ct. Doc. 93 (June 21, 2016).¹ The district court denied those motions, Pet. App. 1a-18a, 1b-18b, and denied each petitioner a certificate of appealability (COA), id. at 18a, 18b. The court of appeals, however, granted COAs and then affirmed. Id. at 1c-4c; 17-36004 C.A. Doc. 3-1 (Oct. 28, 2020); 17-36007 C.A. Doc. 3-1 (Oct. 28, 2020).

1. In July 2004, petitioners, armed with guns, entered the Winner's Circle sports bar in Billings, Montana, and forced the bar's patrons to lie on the floor. Chachanko Presentence

¹ All citations to district court documents and docket entries are to those in United States v. Sam, No. 05-cr-52.

Investigation Report (PSR) ¶ 7. Chachanko, who was carrying a semiautomatic rifle, stood over the patrons and monitored local police radio traffic, at one point advising Sam that they "still had time." Ibid.; D. Ct. Doc. 54, at 52 (Dec. 29, 2005).

Meanwhile, Sam, who was carrying a Glock .45-caliber handgun, forced a female employee to give him money from the cash register and gaming machines. PSR ¶ 7; D. Ct. Doc. 55, at 29-30 (Dec. 29, 2005). One or both petitioners also ordered the female employee to open the bar's safe and then made her lie on the floor after she explained that she did not have access to the safe. PSR ¶ 7. As the robbery continued, Sam used "zip-ties" to bind the patrons' hands and feet together. Ibid. Petitioners fled the scene with the money they had taken after learning that one of the patrons had activated a silent alarm. PSR ¶¶ 7, 12

The following night, petitioners carried out a similar armed robbery at a bar in Columbus, Montana. PSR ¶¶ 7, 9. During that robbery, petitioners again told the bar's patrons to get on the floor, and petitioners began to bind the patrons' hands with zip ties. PSR ¶ 9. One petitioner held a gun to the female bartender's head and directed her to empty the cash register. Ibid. Petitioners stole approximately \$6000 during that robbery. PSR ¶ 18.

2. A federal grand jury in the District of Montana charged petitioners with one count of conspiring to engage in robbery in

violation of the Hobbs Act, 18 U.S.C. 1951; one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951 and 2; one count of using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1) and 2; and two counts of possessing a stolen firearm, in violation of 18 U.S.C. 922(j). C.A. App. 273-275. The Section 924(c) count identified petitioners' Hobbs Act robbery offense as the underlying crime of violence; both counts arose from petitioners' robbery of the Winner's Circle bar. Id. at 273-274. The grand jury also charged each petitioner with two counts of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). C.A. App. 275-276.

Both petitioners pleaded guilty to the Hobbs Act conspiracy count, the Hobbs Act robbery count, and the Section 924(c) count. D. Ct. Doc. 33, at 2-5 (Nov. 28, 2005); D. Ct. Doc. 47, at 2-6 (Dec. 2, 2005). In pleading guilty to the Hobbs Act robbery count, each petitioner acknowledged that he "forcibly took * * * money" from the Winner's Circle at gunpoint "or did aid or abet in the same." D. Ct. Doc. 33, at 3; D. Ct. Doc. 47, at 3. Each petitioner also acknowledged that the Hobbs Act robbery count charged in the indictment required the government to prove that he "induced persons at the Winner's Circle to part with property" and that he "did so knowingly and deliberately by robbery." D. Ct. Doc. 33, at 5; D. Ct. Doc. 47, at 5.

During Chachanko's plea hearing, the district court asked Chachanko how he committed the Hobbs Act robbery charged in the indictment. D. Ct. Doc. 54, at 51. Chachanko responded, "[W]e was driving and seen that casino there, so we went and parked the car * * * by the back. * * * [P]ut our ski masks on. Got the guns. Went in there. Asked them -- you know, took the money. Robbed them. Ran out." Ibid. Chachanko admitted that he was carrying a rifle during the robbery and that he "show[ed] the firearm to the people" in the Winner's Circle "to scare them into giving [him] the money." Id. at 52; see also id. at 52-54.

During Sam's plea hearing, the district court asked Sam whether he "actually rob[bed] the Winner's Circle," and Sam responded, "I did." D. Ct. Doc. 55, at 27-28. Sam explained that he "went in with a friend" and that the two of them "took * * * money" at gunpoint and fled. Id. at 27. Sam also admitted that he "induced persons at the Winner's Circle bar * * * to part with their money by robbing them" and that he did so "by actual and threatened force, violence, and fear of injury." Id. at 28-29. Sam told the court that he was carrying a Glock .45-caliber pistol during the robbery and that he "used the gun to obtain the money." Id. at 29-30.

The district court accepted petitioners' guilty pleas and sentenced Sam to 221 months of imprisonment, to be followed by five years of supervised release, and Chachanko to 219 months of

imprisonment, to be followed by five years of supervised release. C.A. App. 162-164, 277-279. The court of appeals affirmed. 2007 WL 1182478.

3. In 2016, both petitioners filed motions for postconviction relief under 28 U.S.C. 2255, contending that their Section 924(c) convictions should be vacated on the theory that "Hobbs Act robbery does not qualify as a 'crime of violence' under § 924(c)(3)." D. Ct. Doc. 91, at 4; see D. Ct. Doc. 93, at 5 (same). Section 924(c)(3) defines a "crime of violence" as a felony offense that either "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), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioners asserted that Hobbs Act robbery does not qualify as a crime of violence under Section 924(c)(3)(B) in light of this Court's decision in Johnson v. United States, 576 U.S. 591 (2015), which held that a similarly phrased clause in 18 U.S.C. 924(e)(2)(B) was unconstitutionally vague. See D. Ct. Doc. 91, at 7-9; D. Ct. Doc. 93, at 7-10. Petitioners further argued 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 the intentional use or threatened use

of physical force. See D. Ct. Doc. 91, at 12-18; D. Ct. Doc. 93, at 12-18.

The district court denied the motions. Pet. App. 1a-18a, 1b-18b. The court assumed that Section 924(c)(3)(B) was unconstitutionally vague based on Johnson, id. at 5a, 5b, but found that petitioners' Section 924(c) convictions "remain valid after Johnson" because circuit precedent established that Hobbs Act robbery is a crime of violence under Section 924(c)(3)(A), id. at 6a, 6b; see id. at 6a-17a, 6b-17b. The court accordingly determined that petitioners were not entitled to relief under Section 2255, and it denied petitioners' requests for COAs. Id. at 17a-18a, 17b-18b.

4. The court of appeals granted each petitioner a COA on the issue of "whether [petitioner's] conviction for violating 18 U.S.C. § 924(c) must be vacated because Hobbs Act robbery based on an aiding and abetting theory of liability is not a qualifying predicate crime of violence." 17-36004 C.A. Doc. 3-1, at 1; 17-36007 C.A. Doc. 3-1, at 1. The court granted similar COAs in five other appeals filed by Section 2255 movants in unrelated criminal cases, and the court subsequently consolidated the seven pending appeals. 17-36007 C.A. Doc. 5, at 3 (Jan. 22, 2021); see 17-36007 C.A. Doc. 4, at 3 (Jan. 5, 2021).

The court of appeals affirmed in an unpublished decision. Pet. App. 1c-4c. The court explained that its precedent

establishes that Hobbs Act robbery is a crime of violence and that "aiding and abetting a crime of violence is also a crime of violence." Id. at 4c. The court accordingly affirmed the district courts' denials of the seven underlying Section 2255 motions.

ARGUMENT

Petitioners contend (Pet. 5-11) that aiding and abetting robbery in violation of the Hobbs Act, 18 U.S.C. 1951(a), does not qualify as a "crime of violence" under 18 U.S.C. 924(c)(3)(A). That contention lacks merit. Every court of appeals that has considered the issue has determined that Hobbs Act robbery qualifies as a crime of violence under Section 924(c)(3)(A), and this Court has repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on that issue. Petitioners' characterization of their underlying predicate offense as "aiding and abetting Hobbs Act robbery," Pet. 5, is at odds with the district court's description of their offense, and in any event, aiding and abetting Hobbs Act robbery likewise qualifies as a crime of violence under 18 U.S.C. 924(c)(3). Every circuit to address the issue has recognized as much, and this Court has repeatedly denied petitions for writs of certiorari raising the question. The same result is warranted here.

1. The court of appeals correctly recognized that petitioners' convictions for Hobbs Act robbery qualify as "crime[s] of violence" for purposes of their convictions under

Section 924(c). Pet. App. 4c. Section 924(c)(3) defines a “crime of violence” to include a federal felony that “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). Hobbs Act robbery requires the taking of personal property “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). Those requirements fit the definition of a “crime of violence” in Section 924(c)(3)(A). See, e.g., United States v. Hill, 890 F.3d 51, 57 (2d Cir. 2018) (observing that the elements of Hobbs Act robbery “would appear, self-evidently, to satisfy” the definition of a “crime of violence” in Section 924(c)(2)(A)), cert. denied, 139 S. Ct. 844 (2019).

The determination that Hobbs Act robbery qualifies as a “crime of violence” under Section 924(c)(3)(A) is reinforced by this Court’s decision in Stokeling v. United States, 139 S. Ct. 544 (2019), which identified common-law robbery as the “quintessential” example of a crime that requires the use or threatened use of physical force. Id. at 551 (discussing definition of “violent felony” in 18 U.S.C. 924(e)(2)(B)(i)). The elements of common-law robbery track the elements of Hobbs Act robbery in relevant respects. See id. at 550 (observing that common-law robbery was an “unlawful taking” by “force or violence,”

meaning force sufficient “to overcome the resistance encountered”) (citation and emphasis omitted).

Every court of appeals that has considered the issue has held that Hobbs Act robbery is categorically a “crime of violence” under Section 924(c) (3) (A). See, e.g., United States v. Scott, 14 F.4th 190, 195 n.1 (3d Cir. 2021); United States v. Tuan Ngoc Luong, 965 F.3d 973, 990 (9th Cir. 2020), cert. denied, 142 S. Ct. 336 (2021); United States v. Richardson, 948 F.3d 733, 741-742 (6th Cir.), cert. denied, 141 S. Ct. 344 (2020); Brown v. United States, 942 F.3d 1069, 1075 (11th Cir. 2019) (per curiam); United States v. Mathis, 932 F.3d 242, 265-266 (4th Cir.), cert. denied, 140 S. Ct. 639, and 140 S. Ct. 640 (2019)); United States v. García-Ortiz, 904 F.3d 102, 109 (1st Cir. 2018), cert. denied, 139 S. Ct. 1208 (2019); United States v. Melgar-Cabrera, 892 F.3d 1053, 1060-1066 (10th Cir.), cert. denied, 139 S. Ct. 494 (2018); Hill, 890 F.3d at 56-60 (2d Cir.); United States v. Buck, 847 F.3d 267, 274-275 (5th Cir.), cert. denied, 137 S. Ct. 2231, and 138 S. Ct. 149 (2017); Diaz v. United States, 863 F.3d 781, 783 (8th Cir. 2017); United States v. Rivera, 847 F.3d 847, 848-849 (7th Cir.), cert. denied, 137 S. Ct. 2228 (2017). And this Court has recently and repeatedly denied petitions for a writ of certiorari challenging the circuits’ consensus on the application of Section 924(c) (3) (A) to Hobbs Act robbery.²

² See, e.g., Felder v. United States, 142 S. Ct. 597 (2021) (No. 21-5461); Lavert v. United States, 142 S. Ct. 578 (2021) (No.

2. Before this Court, petitioners do not dispute that Hobbs Act robbery constitutes a crime of violence. Instead, they contend (Pet. 5) that the crime of violence underlying their Section 924(c) convictions was “aiding and abetting Hobbs Act robbery,” not the commission of Hobbs Act robbery as a principal. In their Section 2255 motions, however, petitioners characterized the offense

21-5057); Ross v. United States, 142 S. Ct. 493 (2021) (No. 21-5664); Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Moore v. United States, 142 S. Ct. 252 (2021) (No. 21-5066); Copes v. United States, 142 S. Ct. 247 (2021) (No. 21-5028); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); Fields v. United States, 141 S. Ct. 2828 (2021) (No. 20-7413); Thomas v. United States, 141 S. Ct. 2827 (2021) (No. 20-7382); Walker v. United States, 141 S. Ct. 2823 (2021) (No. 20-7183); Usher v. United States, 141 S. Ct. 1399 (2021) (No. 20-6272); Steward v. United States, 141 S. Ct. 167 (2020) (No. 19-8043); Terry v. United States, 141 S. Ct. 114 (2020) (No. 19-1282); Hamilton v. United States, 140 S. Ct. 2754 (2020) (No. 19-8188); Diaz-Cestary v. United States, 140 S. Ct. 1236 (2020) (No. 19-7334); Walker v. United States, 140 S. Ct. 979 (2020) (No. 19-7072); Tyler v. United States, 140 S. Ct. 819 (2020) (No. 19-6850); Hilario-Bello v. United States, 140 S. Ct. 473 (2019) (No. 19-5172); Nelson v. United States, 140 S. Ct. 469 (2019) (No. 19-5010); Apodaca v. United States, 140 S. Ct. 432 (2019) (No. 19-5956); Young v. United States, 140 S. Ct. 262 (2019) (No. 19-5061); Durham v. United States, 140 S. Ct. 259 (2019) (No. 19-5124); Munoz v. United States, 140 S. Ct. 182 (2019) (No. 18-9725); Lindsay v. United States, 140 S. Ct. 155 (2019) (No. 18-9064); Hill v. United States, 140 S. Ct. 54 (2019) (No. 18-8642); Greer v. United States, 139 S. Ct. 2667 (2019) (No. 18-8292); Rojas v. United States, 139 S. Ct. 1324 (2019) (No. 18-6914); Foster v. United States, 139 S. Ct. 789 (2019) (No. 18-5655); Desilien v. United States, 139 S. Ct. 413 (2018) (No. 17-9377); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Robinson v. United States, 138 S. Ct. 1986 (2018) (No. 17-6927); Chandler v. United States, 138 S. Ct. 1281 (2018) (No. 17-6415); Middleton v. United States, 138 S. Ct. 1280 (2018) (No. 17-6343); Jackson v. United States, 138 S. Ct. 977 (2018) (No. 17-6247); Garcia v. United States, 138 S. Ct. 641 (2018) (No. 17-5704).

underlying their Section 924(c) convictions as "Hobbs Act robbery," and they did not claim that their Hobbs Act robbery offense rested on an aiding-and abetting theory. D. Ct. Doc. 91, at 4; D. Ct. Doc. 93, at 5; see D. Ct. Doc. 91, at 1-19; D. Ct. Doc. 93, at 1-19. In denying petitioners' Section 2255 motions, the district court likewise found that the predicate crime underlying each petitioner's Section 924(c) was "robbery as defined by the Hobbs Act," and the court did not mention or discuss an aiding-and-abetting theory of liability. Pet. App. 6a, 6b; see id. at 1a-18a, 1b-18b.

In any event, as the court of appeals correctly recognized, each petitioner's Hobbs Act robbery offense qualifies as a crime of violence under Section 924(c)(3)(A) regardless of whether he was liable for that offense as a principal or as an aider and abettor. Pet. App. 4c. When a defendant is charged with an offense under an aiding-and-abetting theory, the government must prove that either the defendant or one of his accomplices committed each of the elements of the underlying offense and that the defendant was "punishable as a principal" for that offense because he took active and intentional steps to facilitate the crime. 18 U.S.C. 2(a); see Rosemond v. United States, 572 U.S. 65, 70-74 & n.6 (2014). Accordingly, because it is necessary for the government to prove that the crime occurred, if the substantive crime "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), then a conviction for aiding and abetting that crime necessarily includes proof of that force element.

Every court of appeals to have considered the question has accordingly recognized that aiding and abetting a crime, such as a robbery crime, that has a requisite element of the use of force under Section 924(c)(3)(A) and similar provisions qualifies as a crime of violence. See, e.g., Young v. United States, 22 F.4th 1115, 1123 (9th Cir. 2022) (aiding and abetting armed bank robbery is a crime of violence under Section 924(c)(3)(A)); United States v. Caldwell, 7 F.4th 191, 212-213 (4th Cir. 2021) (same for aiding and abetting bank robbery); United States v. Brown, 973 F.3d 667, 697 (7th Cir. 2020) (same for aiding and abetting Hobbs Act robbery), cert. denied, 141 S. Ct. 1253 (2021); 142 S. Ct. 243, 142 S. Ct. 245, 142 S. Ct. 248 (2021); and 142 S. Ct. 932 (2022); Richardson, 948 F.3d at 741-742 (6th Cir.) (same); Kidd v. United States, 929 F.3d 578, 581 (8th Cir. 2019) (per curiam) (same for aiding and abetting armed robbery involving controlled substances); García-Ortiz, 904 F.3d at 109 (1st Cir.) (same for aiding and abetting Hobbs Act robbery); United States v. Deiter, 890 F.3d 1203, 1214-1216 (10th Cir.) (aiding and abetting bank robbery qualifies as a violent felony under 18 U.S.C. 924(e)(2)(B)(i)), cert. denied, 139 S. Ct. 647 (2018); In re Colon, 826 F.3d 1301, 1305 (11th Cir. 2016) (aiding and abetting Hobbs

Act robbery qualifies under Section 924(c)(3)(A)); United States v. McGill, 815 F.3d 846, 944 (D.C. Cir. 2016) (per curiam) (same for aiding and abetting murder), cert. denied, 138 S. Ct. 57, and 138 S. Ct. 58 (2017). And this Court has consistently declined to review petitions for a writ of certiorari contending that aiding and abetting Hobbs Act robbery is not a crime of violence under Section 924(c)(3)(A).³ The same course is appropriate here.

3. This Court's recent decision in United States v. Taylor, 142 S. Ct. 2015 (2022) does not undermine the circuits' uniform determination that both Hobbs Act robbery and aiding and abetting Hobbs Act robbery qualify as crimes of violence under Section 924(c)(3)(a).

In Taylor, this Court held that attempted Hobbs Act robbery is not a "crime of violence" under Section 924(c)(3)(a) because it does not have as an element the use, attempted use, or threatened use of physical force. 142 S. Ct. at 2025-2026. In making that determination, however, the Court recognized that the elements of attempted Hobbs Act robbery are different from the elements of completed Hobbs Act robbery, and thus distinguished between the

³ See, e.g., Hall v. United States, 142 S. Ct. 492 (2021) (No. 21-5644); Gordon v. United States, 142 S. Ct. 491 (2021) (No. 21-5589); Council v. United States, 142 S. Ct. 243 (2021) (No. 21-5013); Stallworth v. United States, 141 S. Ct. 2524 (2021) (No. 20-6563); Deiter v. United States, 139 S. Ct. 647 (2018) (No. 18-6464); Ragland v. United States, 138 S. Ct. 1987 (2018) (No. 17-7248); Stephens v. United States, 138 S. Ct. 502 (2017) (No. 17-5186).

two crimes. See id. at 2020 ("Whatever one might say about completed Hobbs Act robbery, attempted Hobbs Act robbery does not satisfy the elements clause."); see also United States v. Baker, 49 F.4th 1348, 1360 (10th Cir. 2022) ("Taylor left no room for reasonable debate that the crime-of-violence status of the completed offense of Hobbs Act robbery was not of analytical concern there; indeed, the Court expressly acknowledged that the issue was not before it."); United States v. Moore, 2022 WL 4361998, at *1 (8th Cir. 2022) (recognizing that Taylor does not affect the status of completed Hobbs Act robbery).

In turn, because the government must prove the elements of a completed Hobbs Act robbery whether a defendant is convicted as a principal or an aider and abettor, see p. 12-13, supra, Taylor does not affect this petition. No further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2022