

No. 23-5426

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER ROBERTSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT.

U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER ROBERTSON # 90029-083
(Your Name)

P.O. BOX 2000
(Address)

BRUCETON MILLS WV 26525
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) CAN A DEFENDANT BE CONVICTED OF A 924(C) OFFENSE, IF DEFENDANT WAS CONVICTED OF ATTEMPTED HOBBS ACT ROBBERY. ?
- 2) CAN A DEFENDANT BE CONVICTED OF A 924(C) OFFENSE, IF DEFENDANT WAS CONVICTED OF CONSPIRACY HOBBS ACT ROBBERY. ?
- 3) CAN A DEFENDANT BE CONVICTED OF A 924(C) OFFENSE BASED ON A MISSTATEMENT OF LAW AS TO "ATTEMPT" ?
- 4) CAN THE RESIDUAL CLAUSE STILL BE USED IN JURY INSTRUCTIONS TO DEFINE A CRIME OF VIOLENCE EVEN AFTER IT WAS FOUND UNCONSTITUTIONAL IN DAVIS, 139 S. CT 2319 (2019) ?

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A	- JUDGEMENT NO. 21-4438 Filed 5-23-23
APPENDIX B	- JURY INSTRUCTION 42, 43, 44, 48, 39, 46, 49, 12 37, 52, 54, 55
APPENDIX C	- SPECIAL VERDICT FORM
APPENDIX D	- 8-12-21- SENTENCING TRANSCRIPTS HON JUDGE DAVID J. NOVAK ASSESSING ROBBERIES
APPENDIX E	- ALL 13 ARE ATTEMPTED ROBBERIES (Pg 31 NO. 13-16)
APPENDIX F	

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- UNITED STATES OF AMERICA VS. ROBERTSON
CRIMINAL NO. 4:18-CR-27-01
- UNITED STATES OF AMERICA VS. CHRISTOPHER ROBERTSON
USA/USCA4 APPEAL: 21-4438

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- UNITED STATES VS. DAVIS, 139 S. CT 2319 (2019) 8, 9
- U.S. VS. TAYLOR, 142 S. CT. 2015 (2022) 6, 7
- U.S. VS. TAYLOR, 979 F.3d 203 (4th cir 2020) 6
- DAVENPORT VS. U.S., NO 16-15939, DE11 AT 6-8 (11th cir) 7
- U.S. VS. JACKSON, SS F. 4th 846, 850 (11th cir 2022) 7
- U.S. VS. LOCKETT, 810 F.3d 1262, 11th cir 2016 7
- MATHIS VS. U.S. 579 U.S. 500, 517-19 (2016) 7
- ESTELLE VS. MCEUIRE, 502 U.S. 62, 72 (1991) 10

STATUTES AND RULES

- 18 U.S.C § 1951 (a)
- 18 U.S.C. § 924 (C)(1)(A)(i); (iii)

OTHER

- NEDER VS. U.S., 527 U.S. 1, 8-10 (1999) 8
- SULLIVAN VS. LOUISIANA, 508 U.S. 527 (1993) 8

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5-23-23.

☒ No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE CONSTITUTIONAL PROVISIONS INVOLVED ARE A
VIOLATION OF THE PETITIONER'S 5th AMENDMENT
CONSTITUTIONAL RIGHTS AND 14th AMENDMENT'S
CONSTITUTIONAL RIGHTS TO DUE PROCESS

THE STATUTORY PROVISIONS INVOLVED ARE

18 U.S.C. § 924 (c)(1)(A)(ii)

18 U.S.C. § 1951 (a)

STATEMENT OF THE CASE

ON MARCH 14, 2018, ROBERTSON AND CO-DEFENDANT AQUILLA JONES WERE NAMED IN AN INDICTMENT ALLEGING 1) CONSPIRACY TO COMMIT ROBBERY 2) VARIOUS ATTEMPTED HOBBS ACT ROBBERY COUNTS 3) MULTIPLE COUNTS OF BRANDISHING A FIREARM, ALL IN VIOLATION OF TITLE 18 U.S.C. § 1951, 924(c) AND 2, RESPECTIVELY THE INDICTMENT SPECIFICALLY CHARGED ROBERTSON IN THE CONSPIRACY, 12 ATTEMPTED ROBBERIES AND 2 BRANDISHING COUNTS

A SUPERSEDING INDICTMENT ADDED CHARGES AGAINST BOTH DEFENDANTS WAS RETURNED ON JANUARY 16, 2019, IT ADDED A ROBBERY AND (6) ADDITIONAL FIREARM COUNTS AGAINST ROBERTSON. THE SUPERSEDING INDICTMENT CHARGED ROBERTSON, IN TOTAL, WITH 23 COUNTS. THE FIRST (22) COUNTS INVOLVED THE FOLLOWING OFFENSES: 1) CONSPIRACY TO COMMIT ROBBERY 2) (13) ATTEMPTED HOBBS ACT ROBBERY COUNTS; AND 3) (8) COUNTS OF BRANDISHING A FIREARM IN THE COMMISSION OF THE ALLEGED CRIME OF VIOLENCE AS AN AIDER AND ABETTOR; ALL IN VIOLATION OF 18 U.S.C §§ 1951, 924(c) AND 2.

ROBERTSON WAS TRIED BEFORE A JURY ON ALL 23 COUNTS OF THE SUPERSEDING INDICTMENT. THAT TRIAL RESULTED IN A MISTRIAL. A STIPULATION WAS MADE IN THAT TRIAL THAT READ "THE PARTIES STIPULATED AND AGREED THAT "THE BUSINESSES INVOLVED IN THE INDICTMENT WERE IN AND DID AFFECT INTERSTATE COMMERCE ON THE LISTED DATES", AND THAT "THE ROBBERY OR ATTEMPTED ROBBERY OF THE LISTED BUSINESSES AFFECTED COMMERCE. AFTER THE TRIAL, COUNSEL FOR ROBERTSON WITHDREW. ROBERTSON'S NEW TRIAL ON ALL 23 COUNTS WAS SCHEDULED FOR SEPTEMBER 24, 2019.

ON AUGUST 12, 2019, A SECOND SUPERSEDING INDICTMENT CHARGING ROBERTSON WITH THE SAME 23 COUNTS AND JOINING IN EZEKIAL KEATON AS AN ALLEGED CO-CONSPIRATOR.

IN PREPARATION FOR THIS RETRIAL, ON OR ABOUT FEBRUARY 11, 2021, THE GOVERNMENT SENT 4 PROPOSED STIPULATIONS TO COUNSEL TO OBTAIN ROBERTSON'S ASSENT. ROBERTSON AGREED TO STIPULATE TO THREE OF THE FOUR, ROBERTSON DECLINED TO STIPULATE TO THE INTERSTATE COMMERCE NEXUS FOR THE BUSINESSES WHICH WERE INVOLVED IN THE INDICTMENT WHICH PROVIDED FEDERAL JURISDICTION FOR ALL THESE OFFENSES. FOR HIS PART, ROBERTSON DECLINED TO STIPULATE TO THE INTERSTATE COMMERCE NEXUS FOR THE BUSINESSES WHICH WERE INVOLVED IN THE INDICTMENT WHICH PROVIDED FEDERAL JURISDICTION FOR ALL THESE OFFENSES. ON FEBRUARY 26, 2021, THE GOVERNMENT SOUGHT AUTHORITY FROM THE COURT TO ENFORCE FIVE (5) OF THOSE STIPULATIONS TO WHICH ROBERTSON HAD BEEN PREVIOUSLY AGREED IN THE FEBRUARY 2019 TRIAL THAT ENDED IN A MISTRIAL. ROBERTSON FILED A WRITTEN OBJECTION ONLY TO THE INTERSTATE STIPULATION ON FEBRUARY 27. ON THE MORNING OF TRIAL, THE DISTRICT COURT RULED FOR THE GOVERNMENT AND HELD THAT THE STIPULATIONS WERE VALID AND THAT ROBERTSON MUST BE HELD TO ABIDE BY HIS PREVIOUS STIPULATIONS. THE JURY TRIAL WAS HELD BETWEEN MARCH 1 AND 5, 2021. THE COURT ADMITTED THE STIPULATIONS. AT THE CONCLUSION OF THIS TRIAL, THE JURY FOUND ROBERTSON GUILTY OF TWENTY (20) OF THE CHARGED COUNTS SPECIFICALLY, ROBERTSON WAS FOUND GUILTY OF: CONSPIRACY TO COMMIT HOBBS ACT ROBBERY; ELEVEN ATTEMPTED HOBBS ACT ROBBERYS, TWO OTHER ATTEMPTED HOBBS ACT ROBBERYS; AND SIX COUNTS OF BRANDISHING A FIREARM IN THE COMMISSION OF A CRIME OF VIOLENCE AS AN AIDER AND ABETTOR.

REASONS FOR GRANTING THE PETITION

THE FOURTH CIRCUIT IS WHERE U.S. VS. TAYLOR, 142 S. CT. 2015 (2022) ORIGINATED FROM, SEE U.S. VS. TAYLOR, 979 F.3d 203 - (4th cir 2020), INDEED, WHILE THE FIFTH, SEVENTH, NINTH, and ELEVENTH CIRCUITS HAVE ALL HELD THAT ATTEMPTED HOBBS ACT ROBBERY WAS A CRIME OF VIOLENCE, THE FOURTH CIRCUIT DISAGREED. THIS COURT ULTIMATLY SIDED WITH THE FOURTH CIRCUITS REASONING. HOWEVER, NOW IN THIS INSTANT CASE, THE FOURTH CIRCUIT WANTS TO CHANGE COURSE AGAIN AND UPHOLD (7) 924(C) COUNTS TO UNDERLYING ATTEMPTED HOBBS ACT ROBBERIES. THE FOURTH CIRCUIT DOES NOT IN THERE JUDGEMENT DISPUTE THAT THE PETITIONER'S 924(C) CONVICTIONS ARE PREDICATED ON ATTEMPTED HOBBS ACT ROBBERIES, RATHER, THEY REASON THAT THE PETITIONER, THRU HIS ~~ATTORNEY~~ INVITED THE ERROR.

THE SUPREME COURT'S DECISION IN UNITED STATES VS. TAYLOR IMPACTS THE ANALYSIS OF WHETHER A HOBBS ACT CHARGE PURSUANT TO 18 U.S.C. § 1951(a) IS A PREDICATE CRIME OF VIOLENCE IN SATISFACTION OF 18 U.S.C. § 924(c), THE FOURTH CIRCUIT PATTERN JURY INSTRUCTION GIVEN TO THE JURY IN THIS MATTER- EXPANDED THE ELEMENTS OF HOBBS ACT ROBBERY, 18 U.S.C. § 1951, TO THE EXTENT THAT THE OFFENSE WAS CATEGORICALLY OVERBROAD RELATIVE TO THE ELEMENTS OF 18 U.S.C. § 924(c)(3), WHICH DEFINES A "CRIME OF VIOLENCE", AS REQUIRED BY § 924(c)(1)(A)(i), ACCORDINGLY, THE COURT DID NOT HAVE JURISDICTION TO ISSUE JUDGEMENT AS TO THE CATEGORICALLY OVERBROAD OFFENSES OF "ATTEMPT", BECAUSE SUCH OVERBROAD OFFENSES ARE NOT "OFFENSES AGAINST THE LAWS OF THE "UNITED STATES" PURSUANT TO 18 U.S.C. § 3231. AS INSTRUCTED, THE JURY WAS PRESENTED WITH A CATEGORICALLY OVERBROAD HOBBS ACT ROBBERY OFFENSE, WHICH ALLOWED FOR THE COMMISSION OF HOBBS ACT ROBBERY BY "ATTEMPT", THE JURY INSTRUCTION EXPANDED THE ELEMENTS OF A § 924(c)(3) CRIME OF VIOLENCE, WHICH IS AN OFFENSE THAT "HAS AS AN ELEMENT THE USE, ATTEMPTED USE, OR THREATENED USE OF PHYSICAL FORCE AGAINST THE PERSON OR PROPERTY OF ANOTHER" BY ALLOWING THE JURY TO CONVICT MR. ROBERTSON FOR "ATTEMPT".

THE FOURTH CIRCUIT ATTEMPTS TO EXCUSE THIS CONSTITUTIONAL ERROR BY ASSERTING THAT THE PETITIONERS TRIAL COUNSEL INVITED THE ERROR, HOWEVER, ONE CAN NOT INVITE JURISDICTION ON A QUESTION OF LAW. IT HAS TO BE FOUND, BY DUE PROCESS. IN DAVENPORT VS. UNITED STATES, NO 16-15939, DE 11 AT 6-8 (11th cir) - MAR. 28. 2017, THE PARTIES HAD NOTICE OF THE POTENTIAL INFIRMITY REGARDING ELEVENTH CIRCUIT PATTERN JURY INSTRUCTION 070.3, BUT NEVERTHELESS PROPOSED AND APPROVED THAT VERY INSTRUCTION (DE 49 AT 22) (PUTTING FUTURE LITIGANTS ON NOTICE THAT THE ELEVENTH CIRCUITS PATTERN JURY INSTRUCTIONS MAY EXTEND THE ELEMENTS OF HOBBS ACT ROBBERY PURSUANT TO THE CATEGORICAL APPROACH.) TRIAL PROCEEDED, THE COURT GAVE THE INSTRUCTION AND THE JURY RETURNED ITS VERDICT CONVICTING MR. LOUIS ON ALL COUNTS. (DE 11; DE 11S) HOWEVER, PRIOR TO SENTENCING IN THAT MATTER, THE SUPREME COURT ISSUED ITS OPINION IN U.S. VS. TAYLOR, 142 S.C.T. 2015, 2024-25- (2022), WHICH REQUIRES THE USE OF THE CATEGORICAL APPROACH WHEN INTERPRETING HOBBS ACT ROBBERY CHARGES. Id; SEE ALSO - U.S. VS. JACKSON, 55 F.4th 846, 850 (11th cir 2022) (HOLDING THAT A PRIOR STATE OFFENSE CANNOT SERVE AS AN (ACCA) PREDICATE OFFENSE IF THE STATE LAW UNDER WHICH THE PRIOR OFFENSE WAS CHARGED IS CATEGORICALLY BROADER THEN THE RESPECTIVE ACCA PROVISION; U.S. VS. LOCKETT, 810 F.3d 1262, 1268 (11th cir 2016) (discussing interpretation of divisible of divisible and indivisible STATUTES); MATHIS VS. U.S. 579 U.S. 500, 517-19 (2016) (discussing ELEMENTS AND MEANS OF A CRIME.)

FOLLOWING TAYLOR, THE COURT IN "DAVENPORT" DISMISSED THOSE 924(C) COUNTS. THE PETITIONER ASSERTS THAT THE SIMILAR SITUATION OCCURED IN THE INSTANT CASE U.S. VS. TAYLOR - 979 F.3d 203 (4th cir 2020) HAD ALREADY BEEN DECIDED IN THE FOURTH CIRCUIT, BUT THIS COURTS DECISION IN U.S. VS. TAYLOR, 142 S.C.T. 2015 (2022) HAD YET TO ISSUE AT THE TIME OF THE JURY INSTRUCTIONS.

FOLLOWING TAYLOR IN THE SUPREME COURT, THE DISTRICT COURT WAS CONSTRAINED FROM ENTERING JUDGEMENT ON CATEGORICALLY OVERBROAD HOBBS ACT ROBBERY COUNTS.

THIS COURT SHOULD APPLY ITS RULING IN NEDER VS. UNITED, 527 U.S. - 1, 8-10 (1999) (HOLDING THAT SOME CONSTITUTIONAL ERRORS DEFY - "HARMLESS ERROR" REVIEW AND THAT SUCH ERRORS "INFECT THE ENTIRE TRIAL PROCESS AND NECESSARILY RENDER A TRIAL FUNDAMENTALLY UNFAIR", WHEREAS OTHER ERRORS ARE SUBJECT TO "PLAIN ERROR" REVIEW), AND THAT AN ERRONEOUS JURY INSTRUCTION SUCH AS A MISDESCRIPTION, OMISSION, OR A CONCLUSIVE PRESUMPTION "PRECLUDES THE JURY FROM MAKING A FINDING ON THE ACTUAL ELEMENT OF THE OFFENSE") (INTERNAL CITATIONS OMITTED); SULLIVAN VS. LOUISIANA, - 508 U.S. 275, 278, 281 (1993) (HOLDING THAT A JURY INSTRUCTION ERROR WAS NOT SUBJECT TO HARMLESS-ERROR REVIEW BECAUSE IT "VITIATED ALL THE JURY'S FINDINGS")

18 U.S.C. § 1951, COMMONLY KNOWN AS HOBBS ACT ROBBERY, PROSCRIBES ROBBERY, ATTEMPTED ROBBERY AS WELL AS CONSPIRACY TO COMMIT ROBBERY. CONSPIRACY TO COMMIT HOBBS ACT ROBBERY AND ATTEMPTED ROBBERY, ARE NOT CRIMES OF VIOLENCE AND CANNOT SERVE AS A PREDICATE TO A 924(C) CHARGE. ROBERTSON CHALLENGES THE 6 GUN CONVICTIONS ARGUING THAT THEY RESULTED FROM A GUILTY VERDICT RENDERED BY JURY THAT WAS INSTRUCTED - IN THE FINDING INSTRUCTIONS - THAT CONDUCT WHICH AMOUNTED TO ATTEMPTED ROBBERY, CONSPIRACY TO COMMIT ROBBERY AND THE UNCONSTITUTIONAL RESIDUAL CLAUSE, COULD PROVIDE A PREDICATE FOR SUCH 924(C) VIOLATIONS. ROBERTSON ARGUES THAT BECAUSE JURY INSTRUCTION 42, 43, 44, 46, AND 48 PERMITTED THE JURY TO FIND HIM GUILTY OF ATTEMPTED ROBBERY, JURY INSTRUCTION 37 AND 54 PERMITTED THE JURY TO FIND HIM GUILTY OF CONSPIRACY TO COMMIT ROBBERY AND JURY INSTRUCTION 55 PERMITTED THE JURY TO FIND HIM GUILTY OF A CRIME OF VIOLENCE UNDER THE UNCONSTITUTIONAL RESIDUAL CLAUSE OF 924(C) SEE DAVIS, 139 S. CT 2319 (2019) WHICH ARE NOT A CRIME OF VIOLENCE THE 924 (C) CONVICTIONS ARE NOT APPROPRIATE

ROBERTSON ARGUES THAT FOR COUNTS 8, 9, 11 AND 13, THE JURY INSTRUCTION INSTRUCTED TO CONVICT IN CASES WHERE THE TAKING OF PROPERTY (WHICH REQUIRES PROOF OF AN EXTRA ELEMENT) WAS NOT PROVEN. IN OTHER WORDS, THE INSTRUCTIONS FOR THE ROBBERIES (COUNTS 8, 9, 11, 12, AND 13) WERE IDENTICAL TO THOSE FOR THE ATTEMPTED ROBBERIES (COUNTS 6 AND 10). THAT IS, IT TOLD THE JURY THAT THE LAW TREATED THE TAKING OF PROPERTY THE SAME AS THE ATTEMPTED TAKING OF PROPERTY.

ROBERTSON FURTHER ARGUES THAT FOR COUNTS 1-18, AND 20-22 THE JURY INSTRUCTION INSTRUCTED TO CONVICT, "IF YOU FIND THAT THE GOVERNMENT HAS PROVEN THE DEFENDANT GUILTY OF CONSPIRACY AS CHARGED IN COUNT (1) OF THE AMENDED INDICTMENT, BEYOND A REASONABLE DOUBT, YOU MAY ALSO FIND THE DEFENDANT GUILTY OF THE CRIMES ALLEGED IN COUNTS TWO THROUGH EIGHTEEN, AND TWENTY THROUGH TWENTY-TWO, PROVIDED YOU FIND THAT THE ESSENTIAL ELEMENTS OF THOSE COUNTS AS DEFINED IN THESE INSTRUCTIONS HAVE BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

THOUGH THIS MAY BE A PROPER INSTRUCTION TO SUMMARIZE THE ELEMENTS PROSCRIBED IN THE HOBBS ACT TO CONSIDER A VIOLATION THEREOF. IT FAILS TO REQUIRE THE JURY TO FIND BETWEEN WHICH HOBBS ACT ROBBERY RELATED CONDUCT CONSTITUTES A CRIME OF VIOLENCE AND WHICH DOES NOT, OR PLAINLY PUT, WHICH CONDUCT PROVIDES A PREDICATE FOR A 924(C) CHARGE.

ESPECIALLY, SINCE JURY INSTRUCTION (55) "CRIME OF VIOLENCE" - DEFINED STATED THE TERM "CRIME OF VIOLENCE", MEANS "...OR AN OFFENSE THAT BY ITS VERY NATURE INVOLVES A SUBSTANTIAL RISK THAT SUCH PHYSICAL FORCE MAY BE USED IN COMMITTING THE OFFENSE. THE OFFENSES ALLEGED IN COUNTS ONE THROUGH THIRTEEN AND SIXTEEN OF THE AMENDED INDICTMENT ARE CRIMES OF VIOLENCE.

THUS, SPECIFICALLY JURY INSTRUCTION (55) INSTRUCTED THE JURY ON THE UNCONSTITUTIONAL RESIDUAL CLAUSE POST DAVIS, 139 S. CT 2319 (2019) AND TOLD THEM THAT COUNT ONE-

- WAS A CRIME OF VIOLENCE (CONSPIRACY HOBBS ACT). THE DISTRICT COURT HELD THAT ROBERTSON WAIVED THIS CLAIM BY AGREEING TO THE SUBMITTED FINDING INSTRUCTIONS. IT ALSO FOUND THAT THERE WAS NO ERROR SINCE THE JURY COULD DETERMINE, WITH THE AID OF THE SPECIAL VERDICT FORM, WHICH COUNTS WERE COMPLETED ROBBERIES AND WHICH COUNTS WERE ATTEMPTS, AND THEN APPLY THE FIREARM COUNT ON TOP OF THAT. HOWEVER, THAT WAS UNACHIEVABLE, WHEN LIKE HERE THERE IS A CHANGE IN THE LAW WHICH REDEFINES WHAT CONSTITUTES A CRIME OF VIOLENCE, AND JURY INSTRUCTIONS HAVE NOT YET BEEN REFINED TO ENSURE THAT JURORS UNANIMOUSLY AGREE ON WHICH ONE OF THE THREE TYPES OF CONDUCT REGULATED BY THE HOBBS ACT THE GOVERNMENT HAS PROVED.

IN ESTELLE VS. MCGUIRE, 502 U.S. 62, 72 (1991) THIS COURT HELD THAT ("IT IS WELL ESTABLISHED THAT THE INSTRUCTION MAY NOT BE JUDGED IN ARTIFICIAL ISOLATION, BUT MUST BE CONSIDERED IN THE CONTEXT OF THE INSTRUCTIONS AS A WHOLE AND THE TRIAL RECORD.") THUS, THE SPECIAL VERDICT FORM DOES NOT DISTINGUISH ATTEMPTED ROBBERIES WITH ACTUAL ROBBERIES SO TO RELY ON THAT WOULD BE ERROR. INSTRUCTION 42 AND 43 AND 44, INCLUDE THE WORD ATTEMPT IN EACH ONE AND DOES NOT DISTINGUISH WHICH WAY THE JURY LEANED. INSTRUCTION 48 ALSO CONTAINS THE ELEMENT OF "ATTEMPT". INSTRUCTION 34 CONTAINS THE ELEMENT OF "ATTEMPT". INSTRUCTION (SS) CONTAINS THE UNCONSTITUTIONAL RESIDUAL CLAUSE AND TELLS THE JURY THAT COUNT ONE THROUGH THIRTEEN AND SIXTEEN OF THE AMENDED INDICTMENT ARE CRIMES OF VIOLENCE. HOWEVER, COUNT ONE WAS CHARGED AS CONSPIRACY AND COUNTS SIX AND TEN, WERE CONCLUSIVELY CHARGED AS "ATTEMPTS". THUS THE JURY INSTRUCTIONS TOLD THE JURY THAT CONSPIRACY AND ATTEMPTED HOBBS ACT ROBBERIES WERE CRIMES OF VIOLENCE. IN OTHER WORDS, THE INSTRUCTIONS FOR THE ROBBERIES (COUNTS 8, 9, 15, 11, 12, AND 13) WERE IDENTICAL TO THOSE FOR THE ATTEMPTED ROBBERIES (COUNTS 6 AND 10). INSTRUCTION 12 TOLD THE JURY TO CONSIDER EACH COUNT SEPARATELY. HOWEVER, INSTRUCTION 37, TOLD THE JURY THAT IF IT FOUND GUILTY IN COUNT ONE (CONSPIRACY) THEY MAY ALSO FIND GUILTY IN COUNTS TWO THROUGH EIGHTEEN, AND TWENTY THROUGH TWENTY-TWO UNDER A CONSPIRACY THEORY, YET COUNTS SIX AND TEN WERE CONCLUSIVELY "ATTEMPTED" ROBBERIES.

- THUS, THE UNDERLYING PREDICATE IS CONSPIRACY HOBBS ACT ROBBERY AND ATTEMPTED ROBBERY ESPECIALLY CONSIDERING THE FACT THAT IN JURY INSTRUCTION, AFFECTED BY THE SUPREME COURT'S DAVIS DECISION, AND AS SUCH THE JURY INSTRUCTIONS ARE INSUFFICIENT BECAUSE THEY LEAVE OPEN TO DOUBT WHETHER HIS § 924(C) CONVICTION RESTED ON HIS HAVING CONSPIRED TO COMMIT HOBBS ACT ROBBERY, AS JURY INSTRUCTION 54 "ELEMENTS OF THE OFFENSE - COUNTS 14, 15, 17, 18, 20, 21, 22 THE DISTRICT COURT ERRED IN TELLING THE JURY THAT A CONVICTION COULD BE SUSTAINED IF THE DEFENDANT, AIDED AND ABETTED BY OTHERS AND ALONG WITH OTHER CONSPIRATORS, PROVING THAT ALL HIS § 924(C) CONVICTIONS WERE PREDICATED ON A CONSPIRACY THEORY.

WHEREFORE, THE PETITIONER RESPECTFULLY MOVES THIS COURT TO VACATE ALL HIS § 924(C) CONVICTIONS PURSUANT TO DAVIS, 139 S. CT 2319 (2019), TAYLOR, 142 S. CT 2015 (2022) AND NEDER VS. U.S., 527 U.S. 1, 8-10 (1999) AND GRANT A LIMITED REMAND CONSISTANT WITH THESE DECISIONS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CHRISTOPHER ROBERTSON #90029-083

Date: 7-25-23