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ORIGINAL

No. 23-6844

IN THE SUPREME COURT OF THE UNITED STATES

FILED

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SUPREME COURT, U.S.

ANDRĀ G. GREEN,

Petitioner,

V.

UNITED STATES,

Respondent

U.S. DEPT. OF AGRICULTURE
FOOD AND NUTRITION ASSISTANCE
PROGRAM

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

Petition for A Writ of Certiorari

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Question Presented

Green is serving a life sentence after pleading to a single count of Murder with a Firearm in relation to a crime of violence under 18 U.S.C. § 924(j) based to stand on a completed Hobbs Act robbery of codefendants in Newport News, Virginia. The question presented is whether the United States Federal Government and Sentencing court had jurisdiction over offense. Can 18 U.S.C. § 924(c)(1)(A) elements clause be used for § 924(j) penalties after Supreme Court decision in Estrin Lora v. U.S., and without the "actual unlawful taking or obtaining" can one be in violation of Hobbs Act "robbery"?

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Table of Authorities

U.S. v. Tully 140 F.899 (9th Cir. September 23, 1905) [Cir. Court D. Montana]

U.S. v. Watkins 22 F.2d 937 (U.S.D.C., N.D. California, S.D. October 18, 1927).

People v. Greer 30 Ill.2d 415, 197 N.E. 2d 22 (Ill. 1964)

U.S. v. Lora 599 U.S. 453; S.Ct. 1713; 216 L.Ed. 2d 400; 2023 US LEXIS 2548;

Petition for Writ of Certiorari

Petitioner respectfully asks that a writ of certiorari issue to review judgement below.

Opinions Below

The opinion of the United States District Court for the Eastern District of Virginia appear on pages (A-A5) of the appendix. The opinion of the Fourth Circuit Court of Appeals appears on pages (B-B3) of the Appendix.

Statement of Jurisdiction

The judgement of the Fourth Circuit Court of Appeals was issued on January 28, 2025. This Court has jurisdiction under 28 U.S.C. § 1254 (1).

Introduction and Statement of the Case

In October 2011, Green plead guilty to 2 counts in a 36 count indictment. The first count was vacated on appeal, count 29, which was 18 U.S.C. § 924(j), the second count was affirmed, count 34, which is also 18 U.S.C. § 924(j), which is at question in this petition. For the underlying offense the government used a Hobbs Act Robbery 18 U.S.C. § 1951, Green was not convicted of in the indictment due to offense being dismissed. The offense took place in the City of Newport News, Virginia in the complex known as Brookridge apartments commonly known now as Oak Grove apartments which is governed by the State of Virginia laws and regulations, and under the Virginia legislature who has not ceded or cession any parcel of this land to the United States Federal Government, nor has the legislature or Federal Government transferred or accepted such jurisdiction exclusively under Article 1, § 8, cl. 17, nor has notice or acceptance of jurisdiction been given first under 40 U.S.C. § 3112, before the U.S. Federal Court can claim jurisdiction under 18 U.S.C. § 3231 to hear offenses against the laws of the United States.

Reasons For Granting the Petition

This Court should review Green's case for the reasons that the United States Federal Courts cannot hear criminal offenses without first establishing jurisdiction under 40 U.S.C. § 3112 (former 40 U.S.C. 255). Also crimes has to occur within the "special maritime and territorial jurisdiction of the United States" as defined in 18 U.S.C. § 7(3), for Courts to have jurisdiction to punish an offense against the laws of the United States under 18 U.S.C. § 3231. Evidence has to be sufficient to establish the jurisdictional element of the offense beyond a reasonable doubt, and Courts must take judicial notice of the "legislative fact" that the area of offense is "within" the special maritime and territorial jurisdiction of the United States. Title 18 are offenses against such, "The United States".

Second, an offense under title 18, which occurred on lands not ceded or session to the Federal Government (United States), or where jurisdiction was not transferred by the Sovereign Union State, nor accepted by the United States under 40 U.S.C. § 3112, it is ascertained that such jurisdiction of the United States does not exist and the United States lacks jurisdiction over matters of the offense as well as the U.S. District Courts, because until and unless "notice and acceptance" of jurisdiction has been given, Federal Courts are without jurisdiction to punish under criminal laws of the United States, as provided by 40 U.S.C. § 3112.

To determine wheather a crime took place "within" the special maritime and territorial jurisdiction of the United States requires

two separate inquiries: one to determine the locus of the crime and one to determine the existence vel non of Federal jurisdiction. The former is just a factual question plainly for a jury to decide, the latter turning on a fixed legal status that does not change from case to case and involving consideration of source materials, such as deeds, statutes, city land records, and treaties, that judges are better suited to evaluate than jurist - has always been treated as a legal question that a Court may decide on its own.

There is nothing more crucial, yet so strikingly obvious, as the need to prove the jurisdictional element of a crime.

Third, one cannot assume simply that a Federal installation on Federal land automatically comes within Federal jurisdiction. Jurisdiction MUST be accepted by Federal government if transferred by a Sovereign Union State or else no such jurisdiction by claim of the Federal government exist and thus, the Federal government lacks jurisdiction over subject-matters. In the absence of the State's consent or a cession of jurisdiction, and since 1940, in the absence of an explicit acceptance of jurisdiction by the Federal government, the Federal government's possession is simply that of an ordinary proprietor. The mere fact the Federal government owns or makes "use" of a parcel of land is not sufficient to establish Federal jurisdiction over that land nor give U.S. District Courts power to punish United States laws outside of Federal territory. If one disagrees, the appellate Courts take judicial notice of "legislative facts" under appropriate circumstances, especially where they relate to (straight forward) questions such as "geography and jurisdiction." Indictment must be dismissed.

1. LACK OF JURISDICTION

COMES NOW the appellant, ANDRA G. GREEN, pro se, and files this brief for lack of jurisdiction of Sentencing Court and Federal Government as to count of conviction of the indictment in this cause, and in support thereof, Mr. Green, states as follows:

The failure of a count in the indictment to charge an "offense against law of the United States" is a jurisdictional defect under 18 U.S.C. § 3231 requiring dismissal.

Where an indictment's failure to charge ANY Federal crime is a jurisdictional defect that requires dismissal of the indictment. The reason for that rule is that a district court's subject-matter jurisdiction over criminal cases is conferred by 18 U.S.C. § 3231, which provides:

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Where an indictment does not actually charge a cognizable offense "against the laws of the United States," there is no statutory basis for any Federal court to exercise "power over a criminal case." In such circumstances, irrespective of a jury verdict or guilty plea, the conviction on those counts is void. Those counts in the indictment must be dismissed.

Green is charged with a offense 18 U.S.C. § 924(c), (j) based on the predicated offense of 18 U.S.C. § 1951. Green was charged with 25 counts out of 35 counts in the instant indictment, where all counts has been dismissed except of the 18 U.S.C. § 924(j) based to stand on its predicate offense of 18 U.S.C. § 1951, which is not an offense against the United States as seen and alleged in the indictment. Green ascertains that the United States

lacks jurisdiction over both conviction offense and predicate offense in his case.

Title 18 U.S.C. § 1951 (b)(3) defines commerce of this statute as:

"Commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the 'United States' has jurisdiction."

As seen with the submitted appeal brief by Green, an attached letter from the Newport News City Attorney, the Federal government has not and does not have jurisdiction over the parcel of land where Green's offense and predicate offense took place. The last sentence of § 1951 (b)(3) states clearly, "and ALL other commerce over which the 'United States' has jurisdiction."

The parcel of land where Green's offense occurred has been privately owned since 1986, and under the territorial jurisdiction of the Union State of Virginia and its laws, which ascertains Virginia Sovereignty.

Green ascertains, Congress refers to places subject to their jurisdiction as the "United States". Title 18 U.S.C. § 5, which defines the term "United States" for all of that title, states that:

"The term 'United States', as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the 'United States'."

The Supreme Court has stated that,

"It is true that the criminal jurisdiction of the United States is in general based on the territorial principal."

The territorial places subject to the jurisdiction of the United States

are defined at Title 18 U.S.C. § 7, Special Maritime and Territorial jurisdiction of the United States defined, and includes:

(3) Any lands, reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or acquired by consent of the legislature of the State.

+ This provision is identical in scope to Article 1, § 8, cl. 17, in the United States Constitution. Green assures the definition Congress has provided us, defining the "United States", together with the special maritime and territorial jurisdiction of the United States defined, completes the full statutory definition of the United States. Green points out that the Union States are not even mentioned and that if the several Union States were already subject to the jurisdiction of Congress, section 7(3) would be exceeding what is sufficient or necessary. Because Congress alone can legislate, the courts cannot construe meanings to definitions using words or phrases Congress has left out. This is why courts have a duty not to read missing words or phrases into congressional legislation which are not there, it is because in doing so they would be legislating, which they have no constitutional authority to do. In construing statutes words are to be given their natural, plain, ordinary and commonly understood meaning unless it is clear that some other meaning was intended. See Wong Kim Bo, Congress has clearly defined the territorial jurisdiction of the United States at Title 18 U.S.C. § 7, pursuant to the limits imposed upon them by the Constitution.

Absent, (1) documentation showing ownership by the United States, over the exact geographical locations wherein the charging document alleges the criminal activity occurred, (2) evidentiary documentation showing a cession by the legislatures of the particular Union State surrendering exclusive or concurrent jurisdiction over the

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same exact geographical locations; or evidentiary documentations showing purchase by consent of the legislature of the particular Union State, and (3) documentation showing acceptance of jurisdiction by the United States, over the same geographical locations, the "United States District Courts" have NO subject-matter jurisdiction over felony offenses where the power to "punish" is not enumerated in the Constitution. Green ascertains his claims through the indictment charging the offenses and proof of the lack of jurisdiction in the document obtained by the City Attorney viewing of land records pertaining to the parcel of land where offense took place.

Without the delegated power to "punish" or ownership and territorial jurisdiction over the place where the crime occurred, no felony "offense against the laws of the United States" can be charged with which the "United States district courts" can take cognizance. This is because that is not territory of the United States in the same vein as the District of Columbia or Puerto Rico. In other words, Congress does not have sovereignty and dominion over those places/lands. The Supreme Court explained that:

"Where lands are acquired without such consent the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor." Fort Leavenworth RR Co v. Lowe, 114 US 525, 531-533, 29 LEd 264 (1885).

Green notes it is clear to see, if the several Union States were already territories belonging to the United States, jurisdiction would not need to be ceded, and the property clause, as well as Article III, would be exceeding what is sufficient or necessary.

Since the Constitution only delegates to the Federal Government the power to "punish" three crimes feloniously: counterfeiting, piracy felonies committed on the high seas, and treason, we can logically deduce that other felonious Federal crimes have no Constitutional application within the United States. The majority of felonious Federal crimes are enacted pursuant to other enumerated powers where the power to "punish" is not delegated, for example, the "Exclusive Legislative Clause" (Article I, §8, cl. 17) and the "Territory Clause" (Article IV, §3, cl. 2). Their Constitutional application is limited to lands where the Federal Government exercise concurrent or exclusive legislative jurisdiction, such as Federal enclaves and the territories.

Green ascertains, Congress has defined the jurisdiction of both the Article III and legislative Federal, and Union State courts in Title 18 U.S.C. § 3231;

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

Green notes for the record that not only does the United States lack jurisdiction over the predicate offense but also his conviction under 18 U.S.C. § 924(j), not only based on the offense but under

1. A proprietor is, one who has the legal right or exclusive title to property, business, etc. In many instances it is synonymous with owner. Black's Law Dictionary, Sixth Edition, pg. 1,220

Title 18 U.S.C. § 1111(b), it states:

"Within the 'special maritime and territorial jurisdiction' of the United States whoever is guilty of murder in the first degree shall be punished by death or imprisonment for life; whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life."

Green was sentenced to LIFE sentence on Standing count in a Federal United States court for first degree murder, which occurred outside the means of the sentencing court's jurisdiction to rule on.

Green states factually that his offense and its predicate offense did NOT occur in "special maritime or territorial jurisdiction" of the "United States" for reasons ascertained herein and the supporting documentation of the Newport News City Attorney showing proof the Federal Government lack jurisdiction over the parcel of land where the United States alleged offense occurred. Without the need for concurrent or exclusive legislative jurisdiction having to be ceded, Congress would not specify murder MUST occur "within" special maritime and territorial jurisdiction of the "United States" to assert power over the crime. Two excellent cases supporting this proposition of law are United States v. Tully, 140 F.899 (9th Cir. September 23, 1905) [Circuit Court, D. Montana]; and United States v. Watkins, 22 F.2d 437 (U.S.D.C., N.D. California, S.D., October 18, 1927).

In Tully, a man who had committed murder on Federal land was released because the court found that the Federal Government had not obtained jurisdiction over the parcel of land where the homicide

was committed. The right to "punish" the felonious crime, therefore, resided with State.

In Watkins, a man who had committed murder on Federal land was convicted, the court finding that jurisdiction over the parcel of land where the homicide was committed had been obtained by the Federal Government. The right to punish the felonious crime therefore, resided with the United States.

In Greer, State had jurisdiction to try defendant for murder which took place on loading dock of United States post office building, where record did not disclose manner in which United States acquired property or whether it had exclusive jurisdiction over crimes committed on post office property.

The Newport News, Office of the City Attorney ascertains Greer's claim in document attached in the claim that the parcel of land has not been ceded or cession to the Federal Government which in turn also ascertains the U.S. District Court has not been put on notice of acceptance or transfer of jurisdiction from the State legislature of Virginia Newport News district.

11. 18 U.S.C. § 924(c)(1)(A) elements cannot be used for 18 U.S.C. § 924(j) as it supplies its own comprehensive set of penalties

Green was convicted of 18 U.S.C. § 924(j) and 2, which penalizes "a person who, in the course of violating subsection (c), causes the death of a person through the use of a firearm," where "the killing is a murder". A violation of subsection (c) occurs when a person "uses or carries a firearm" "during and in relation to any crime of violence or drug trafficking crime," or "possesses

a firearm" in furtherance of any such crime." § 924(c)(1)(A).

Congress did not, as the Government maintains, incorporate § 924(c) as a whole into § 924(j) such that a § 924(j) defendant faces subsection (j)'s penalties *plus* subsection (c)'s penalties. Subsection (j) nowhere mentions — let alone incorporates — subsection (c)'s penalties. Green has not been convicted of a § 924(c) crime, yet the Government uses subsection (c) to hold Green's conviction firm under § 924(c)'s definitive means of a crime of violence, when a sentencing court cannot follow both 18 U.S.C. § 924(c) and 18 U.S.C. § 924(j) as written as § 924(j) and § 924(c) supplies its own set of penalties that apply in its respective statutory codes ~~Section of~~ title 18.

A sentence imposed under subsection (j) does not qualify for section (c), stating the obvious, subsection (j) is not located "within" subsection (c). Nor does subsection (j) call for imposing any sentence from subsection (c). Instead, subsection (j) provides its own set of penalties. See §§ 924(j)(1) - (2).

Green's only conviction here is 18 U.S.C. § 924(j) and 2, he has no § 924(c) conviction or predicate conviction of a crime of violence to uphold his § 924(j) conviction. Green did not partake in the predicate offense to his conviction as shown in Court documents. See indictment, transcripts, and Statement of Facts.

Therefore 18 U.S.C. § 924(c) cannot be adopted into Green's § 924(j) conviction lacking crimes of violence that was committed by Green. See U.S. v. Lora, 599 U.S. 453; S.Ct. 1713; 216 L.Ed. 400; (2023)

III. Without the unlawful taking and obtaining, one cannot violate

Hobbs Act Robbery

As stated in document 81 pg. 2 ¶ 2 of USCA9 Appeal: 16-7168, Green did not participate in a actual robbery, but drove away and returned to the scene where codefendants beat robbed and killed Demareo Hardy, one codefendant being a juvenile at the time. Document states:

"Brown removed Hardy's pants along with other items he picked up off the ground returned to the car, then Sheppard shot Hardy multiple times. returned to the car were defendants fled."

Green being the driver never left the vehicle along with Zakarie Williams, who was not convicted of the murder and was a passenger also.

To commit Hobbs Act robbery, a defendant MUST use or threaten to use "physical force". That means violent force, and that holds true for the "fear of injury" prong of Hobbs Act Robbery. The history of the Hobbs Act makes clear that a "physical act" is a key component to violate Hobbs Act robbery. A defendant cannot put a reasonable person in fear of bodily harm "without" threatening to use force capable of causing physical pain or injury. Green never left his vehicle to "use or threaten to use "physical force" against Hardy, which is known and shown on the record.

The Supreme Court has explained that Hobbs Act Robbery is a distinct offense defined in section §1951 of title 18, and is the ('unlawful taking or obtaining of personal property from the person or in the presence of another, against his will,' § 1951 (b)(1) (emphasis added). Put simply, "one cannot commit Hobbs Act robbery without using or threatening physical force. By statute definition Green

did not commit Hobbs Act robbery.

In the Field Code penal law, the "taking" from another was said to be accomplished "against his will". "The physical power to resist [must be] prostrated by fear." Field Code § 584

If Green never left his vehicle how could he use "physical force" let alone threaten physical force to a victim who had already been robbed and assaulted by codefendants and ultimately killed. Green again, never "took or obtained" property from the victim through use or threatened use of physical force.

By the mis-interpretation and misapplication of subsections in Green's case, it's asked respectfully this Court grant Green's petition and address these Constitutional issues at question, and relief sought in initial motion to vacate sentence.

Conclusion

Green pled guilty to 18 U.S.C. § 924(j) only, with no predicate conviction qualifying as a crime of violence, nor a § 924(c) conviction. One cannot violate § 924(j) without § 924(c) also being violated, and it's ascertained that the Federal Government and U.S. District Court lacked jurisdiction over offense and where offense was committed. Green respectfully ask this Court to grant his petition and review the Fourth Circuit's decision.

Respectfully Submitted,
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