No. 22-7386

IN THE SUPREME COURT OF THE UNITED STATES

LOUIS MCINTOSH, AKA LOU D, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court possessed the authority to order forfeiture, when it ordered forfeiture at sentencing and in the judgment of conviction but failed to enter a preliminary order of forfeiture under Federal Rule of Criminal Procedure 32.2(b) within the timeframe contained in that rule.

2. Whether sufficient evidence supported petitioner's conviction for Hobbs Act robbery, in violation of 18 U.S.C. 1951.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

United States v. McIntosh, No. 11-cr-500 (Aug. 8, 2017)

United States Court of Appeals (2d Cir.):

McIntosh v. United States, No. 14-1908 (Jan. 25, 2023)

United States v. McIntosh, No. 14-3922 (Jan. 25, 2023)

McIntosh v. United States, No. 17-2623 (Jan. 25, 2023)

United States Supreme Court:

McIntosh v. United States, No. 22-5235 (Nov. 7, 2022)

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OPINIONS BELOW

The amended opinion of the court of appeals (Pet. App. A) is reported at 58 F.4th 606. The amended summary order of the court of appeals (Pet. App. B) is not published in the Federal Reporter but is available at 2023 WL 382945. The relevant opinions and orders of the district court are not published in the Federal Supplement but are available at 2014 WL 199515 and 2017 WL 3396429.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 2023. The petition for a writ of certiorari was filed on April

24, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was found guilty of one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; three counts of committing or attempting to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; four counts of using, carrying, or possessing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1); and three counts of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1). C.A. App. A516-A517; see id. at A31-A40. The district court entered a judgment of acquittal on one of the attempted robbery counts and the corresponding Section 924(c) count. Id. at A35-A36, A516. Petitioner was sentenced to 720 months of imprisonment, to be followed by three years of supervised release. Id. at A518-A519. The court orally ordered restitution and forfeiture, which was reflected in the written judgment. Id. at A500-A501, A521-A522.

Petitioner appealed his conviction and sentence, and the government cross-appealed the judgment of acquittal on the two counts. See C.A. App. A568. The court of appeals granted the government's unopposed motion to remand to permit, among other things, the government to request a formal order of forfeiture. See ibid. On

remand, the district court entered formal orders of restitution and forfeiture. Id. at A566-A583; see id. at A597-A598.

On petitioner's appeal of the amended judgment, the court of appeals affirmed petitioner's convictions on eight counts; reversed the judgment of acquittal on the attempted robbery count; affirmed the judgment of acquittal on the accompanying Section 924(c) count; vacated the conviction on another Section 924(c) count; vacated the forfeiture order; and remanded the case for resentencing. Pet. App. A3-A7, B2-B6.

On remand, the district court has resentenced petitioner to 300 months of imprisonment, to be followed by three years of supervised release. D. Ct. Doc. 414, at 3-4 (May 3, 2023). The court has also ordered petitioner to pay $4598 in restitution and to forfeit $28,000 and a BMW. Id. at 7-8.

1. From 2009 through 2011, petitioner was the leader of a group that committed a series of violent robberies. Petitioner's group targeted individuals believed to be in possession of narcotics or narcotics proceeds, as well as businesses and individuals engaged in other commercial activities. Petitioner personally participated in numerous robberies, including robberies during which he threatened and physically assaulted victims with weapons. Gov't C.A. Br. 5.

As relevant here, on September 26, 2010, petitioner and two co-conspirators robbed Robert Rizzatti in his home in New York.

Gov't C.A. Br. 8. Rizzatti was self-employed in the wholesale ice cream business and also loaned money to others for interest. Rizzatti had twice loaned money to Michael Wolf, one of the co-conspirators who participated in the robbery; Wolf used the borrowed money to pay contractors from Tennessee doing work on his home in New York and to fund his family's excavation business. Wolf told petitioner that Rizzatti was a "loan shark" who "lends money and . . . has a lot of money in the house that I've seen before." Id. at 9 (citation omitted). During the robbery, petitioner shocked Rizzatti with a stun gun numerous times, including on his genitals, while demanding to know where Rizzatti kept "the money." Id. at 10 (citation omitted). Petitioner and his co-conspirators stole a loaded pistol and approximately $70,000 hidden in the ceiling. Ibid.

2. On January 18, 2012, a federal grand jury in the Southern District of New York returned a superseding indictment charging petitioner with one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951; three counts of committing or attempting to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951 and 2; four counts of using, carrying, or possessing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1) and 2; and three counts of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2). C.A. App. A31-A43. The indictment also charged co-

defendants with various offenses. Ibid. As to the Hobbs Act counts, the indictment provided notice of the government's intent to seek forfeiture of "all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses." Id. at A40-A41.

Petitioner proceeded to trial. The jury convicted him on all counts. Pet. App. A3.

3. a. Petitioner moved for a judgment of acquittal on several counts, including the Hobbs Act count related to the robbery of Rizzatti's home and the corresponding firearms charge. Petitioner contended that the evidence was insufficient to prove that the robbery had the requisite effect on interstate commerce. C.A. App. A459. The Hobbs Act prohibits robbery that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). The statute defines "commerce" to include "all * * * commerce over which the United States has jurisdiction." 18 U.S.C. 1951(b)(3).

The district court denied the motion in relevant part. C.A. App. A459-A462. The court cited Rizzatti's testimony that the stolen money was "from all [Rizzatti's] work from over the years." Id. at A460 (citation omitted; brackets in original). And the court observed that Rizzatti's work included the distribution of ice cream manufactured in a different state and loans to at least

one individual who used the borrowed money in interstate commerce. Id. at A461.

b. On May 23, 2014, the district court sentenced petitioner to 720 months of imprisonment, to be followed by three years of supervised release. C.A. App. A498. The court orally ordered petitioner to forfeit $75,000 and a BMW. Id. at A501.

Federal Rule of Criminal Procedure 32.2 establishes the procedures governing criminal forfeiture. It provides that a "court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant." Fed. R. Crim. P. 32.2(a). "As soon as practical after a verdict or finding of guilty," the court "must determine what property is subject to forfeiture under the applicable statute." Fed. R. Crim. P. 32.2(b)(1)(A). "If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay." Ibid. The court "must conduct a hearing" if requested by either party and "must promptly enter a preliminary order of forfeiture" if it "finds that property is subject to forfeiture." Fed. R. Crim. P. 32.2(b)(1)(B) and (2)(A). "Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final." Fed. R. Crim. P. 32.2(b)(2)(B). As a general

matter, the order "becomes final as to the defendant" "[a]t sentencing." Fed. R. Crim. P. 32.2(b)(4)(A). "The court must include the forfeiture when orally announcing the sentence" and "must also include the forfeiture order * * * in the judgment," though it may later correct a failure to do so. Fed. R. Crim. P. 32.2(b)(4)(B).

Here, the government did not submit a preliminary order of forfeiture before or during sentencing. C.A. App. A567. At sentencing, the district court directed the government to provide a proposed order of forfeiture for the $75,000 and BMW within one week. Id. at A501, A567-A568. The court's instructions on forfeiture were memorialized in the written judgment. Id. at A522 (ordering forfeiture of "$95,000 in U.S. currency and a BMW" and directing the government to submit a forfeiture order for signature "within one week"); see id. at A568 n.2 (noting parties' agreement that judgment's reference to $95,000, rather than $75,000, was a "clerical error"). The government did not submit the proposed order by the specified deadline. Id. at A567-A568.

c. After petitioner appealed and filed his opening brief, the government filed an unopposed motion to remand to allow the district court to address the erroneous forfeiture amount contained in the judgment and the absence of a formal forfeiture order. C.A. App. A568. The court of appeals granted the motion. The court's order stated that "[o]n remand, if [the government]

wishes to pursue * * * forfeiture, the Government shall * * * request entry of" a "formal order[]" of "forfeiture." Ibid. (citation omitted; brackets in original). The remand order further stated that the district court "may, in accordance with Federal Rule of Criminal Procedure 36, amend the written judgment so that it conforms with the oral sentence pronounced by the court." Id. at A568-A569 (citation omitted).

4. a. On remand, petitioner objected to the entry of an order of forfeiture. C.A. App. A577. He emphasized that the government had failed to propose a preliminary order of forfeiture in advance of sentencing or submit a final order of forfeiture following sentencing, as directed by the district court. Ibid. Petitioner contended that the failure to comply with the deadlines in Federal Rule of Criminal Procedure 32.2 precluded the court from ordering forfeiture "now, some three years after" sentencing. Id. at A578.

The district court rejected that argument based on Dolan v. United States, 560 U.S. 605 (2010), where this Court held that the 90-day deadline for ordering restitution prescribed by the Mandatory Victims Restitution Act of 1996 (MVRA), 18 U.S.C. 3664(d), is a "time-related directive," rather than a jurisdictional or mandatory claims-processing rule, and hence that a sentencing court's failure to satisfy it "does not deprive the court of the power to order restitution." 560 U.S. at 610-611; see C.A. App. A577. The

district court noted that "every circuit to address the forfeiture issue head-on since Dolan has concluded that the deadlines in Rule 32.2 fall in the forgiving category of 'time-related directives.'" C.A. App. A580 (citing cases).

The district court further found that petitioner had received "ample notice" of the potential forfeiture, including from the original indictment in 2011 (which sought forfeiture), the bill of particulars in 2012 and trial in 2013 (which identified the specific personal property subject to forfeiture), and the sentencing in 2014 (which specified the final amount of forfeiture). C.A. App. A581 (capitalization and emphasis omitted); see id. at A581-A582. The court also rejected on various grounds petitioner's claim that the delay in forfeiture had prejudiced him due to the BMW's loss in value. Id. at A582.

The district court entered an amended judgment ordering petitioner to forfeit $75,000 and the BMW. C.A. App. A598. It further directed that the net proceeds from the sale of the BMW be credited against the $75,000. Ibid.; see id. at A584-A590 (preliminary order of forfeiture).

b. The court of appeals affirmed in part, reversed and vacated in part, and remanded for resentencing in a published opinion (Pet. App. A) and a summary order (Pet. App. B).[1]

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[1] The court of appeals issued its original opinion and summary order on January 31, 2022. See 24 F.4th 857; 2022 WL 274225. Petitioner filed a petition for a writ of certiorari from

In its published opinion, the court of appeals rejected petitioner's challenge to the timeliness of the forfeiture order. Pet. App. A3-A5. The court found "instructive" this Court's holding in Dolan, supra, that the MVRA's 90-day directive to order restitution is a time-related directive, which is "'legally enforceable'" but does "'not deprive a judge or other public official of the power to take the action to which the deadline applies if the deadline is missed.'" Pet. App. A3 (citation omitted). The court of appeals concluded that "the considerations that pertained to the restitution order in Dolan similarly apply to the Rule 32.2(b) deadline for forfeiture," such that it is also properly classified as "a time-related directive." Id. at A4.

First, the court of appeals observed that "Rule 32.2 'does not specify a consequence for noncompliance with its timing provisions.'" Pet. App. A4 (quoting Dolan, 560 U.S. at 611). Second, it noted that "the Federal Rules Advisory Committee's notes on the revised rule make clear that the deadline to enter the preliminary order is intended to give the parties time 'to advise the court of omissions or errors in the order before it becomes final' because there is limited opportunity to do so after judgment," whereas the

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those decisions, and this Court granted the petition, vacated the judgment, and remanded the case for further consideration in light of United States v. Taylor, 142 S. Ct. 2015 (2022). See 143 S. Ct. 399. On remand, the court of appeals issued the amended opinion and summary order discussed in the text. See Pet. App. A5 n.1; id. at B5 n.1.

Committee notes do not refer to "an interest in giving defendants certainty as to the amount to be forfeited before sentencing." Ibid. (quoting Fed. R. Crim. P. 32.2(b)(2)(B) advisory committee's note (2009 Amendment)). Third, the court reasoned that "preventing forfeiture due to the missed deadline" could harm "the victims of the crime," who are not responsible for missed deadlines and are "frequently" the recipients of forfeited funds. Ibid. Fourth, it noted that "interpreting the deadline rigidly here would disproportionately benefit defendants." Ibid. Finally, the court pointed out that "a defendant concerned about possible delays or mistakes can remind the district court of the preliminary order requirement any time before sentencing." Ibid.

The court of appeals also rejected petitioner's claim that he was prejudiced by the delay due to a loss in value of the BMW. Pet. App. A4. The court noted that petitioner was on notice of the potential forfeiture and could have sought an interlocutory sale of the BMW pursuant to the Federal Rules of Criminal Procedure. Ibid.

Despite affirming the district court's authority to order forfeiture, the court of appeals vacated and remanded for recalculation of the forfeiture amount. Pet. App. B3. The court noted that the $75,000 figure was improperly based on a theory of joint and several liability, which it concluded is not available in this

context. Ibid. (citing Honeycutt v. United States, 581 U.S. 443, 448-450 (2017)).

In its summary order, the court of appeals rejected petitioner's contention that the evidence was insufficient to prove the requisite nexus between the robbery of Rizzatti and interstate commerce under the Hobbs Act. Pet. App. B3-B4. The court noted that the "burden" of proving a nexus to interstate commerce in a Hobbs Act prosecution is "minimal," and that it may be satisfied by showing a "'very slight effect on interstate commerce.'" Id. at B4 (citation omitted). The court explained that "[a]ll that need be shown is the possibility or potential of an effect on interstate commerce, not an actual effect." Ibid. (citation omitted).

The court of appeals concluded that "[t]he evidence shows that Rizzatti was engaged in two informal businesses affecting interstate commerce: selling ice cream wholesale that was manufactured in and purchased from New Jersey, and loaning money to people in New York who used it for out-of-state contracts." Pet. App. B4. The court observed that petitioner sought to steal the money "used in conducting these enterprises, thus depleting the assets and affecting Rizzatti's ability to purchase more ice cream manufactured in New Jersey and to extend additional loans." Ibid. The court rejected petitioner's argument that the government did not produce evidence showing that Rizzatti would have used the

stolen money in furtherance of either business, reasoning that "'a very slight effect' on one's informal businesses is an inevitable result of unexpectedly losing a significant amount of money." Ibid.

5. The district court resentenced petitioner on May 3, 2023. The parties submitted an agreed-upon preliminary order of forfeiture, providing for forfeiture in the amount of $28,000 and the BMW. D. Ct. Doc. 409, at 4-5 (Apr. 19, 2023); 4/19/23 Resentencing Tr. (Tr.) 28, 30. The court signed the order, reiterated the forfeiture award at sentencing, and entered an amended judgment reflecting the award. Tr. 28, 30; D. Ct. Doc. 414, at 8. In light of other legal developments not pertinent here, the court also resentenced petitioner to 300 months of imprisonment, to be followed by three years of supervised release. D. Ct. Doc. 414, at 3-4.

ARGUMENT

Petitioner contends (Pet. 13-25) that the district court's failure to comply with the deadlines contained in Rule 32.2 of the Federal Rules of Criminal Procedure precluded the court from ordering forfeiture in this case, and that the evidence was insufficient to prove the requisite nexus under the Hobbs Act between his robbery of Rizzatti and interstate commerce. Petitioner further contends (Pet. 15-16, 23-24) that the courts of appeals are divided over both questions. The decision below is correct and

does not conflict with any decision of another court of appeals. Further review is not warranted.

1. a. Rule 32.2 provides that if a district court "finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment" and "directing the forfeiture of specific property." Fed. R. Crim. P. 32.2(b)(2)(A). In addition, "[u]nless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant." Fed. R. Crim. P. 32.2(b)(2)(B). Here, the district court verbally ordered forfeiture at sentencing and included forfeiture in the judgment, while directing the government to submit a formal order of forfeiture within one week. Pet. App. A3; C.A. App. A522. But the government did not submit a proposed order at that time, and as a result, no preliminary or final order of forfeiture was entered until petitioner appealed and the court of appeals remanded to allow the district court to enter a formal forfeiture order. Pet. App. A3.

The court of appeals correctly concluded that Rule 32.2 sets forth time-related directives, not jurisdictional or mandatory claims-processing rules, and that a violation of its requirements accordingly does not preclude a court from ordering forfeiture.

Pet. App. A3-A5. This Court has repeatedly made clear that deadlines in "procedural rule[s]" are ordinarily "nonjurisdictional." Nutraceutical Corp. v. Lambert, 139 S. Ct. 710, 714 (2019). And the Court found in Dolan v. United States, 560 U.S. 605 (2010), that a limitation similar to the deadline here was neither jurisdictional nor a claims-processing rule, even when contained in a statute rather than a rule of procedure.

In Dolan, the Court considered a mandatory-restitution statute, which provided that "the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing." 18 U.S.C. 3664(d)(5). The Court distinguished between a jurisdictional deadline, which imposes an "absolute" "condition upon * * * a court's authority"; a "'claims-processing rule[],'" which "do[es] not limit a court's jurisdiction, but rather regulate[s] the timing of motions or claims brought before the court"; and "a time-related directive," which "is legally enforceable but does not deprive a judge or other public official of the power to take the action to which the deadline applies if the deadline is missed." Dolan, 560 U.S. at 610-611.

The Court classified the restitution deadline there as a time-related directive. Among other things, the Court noted that where "a statute 'does not specify a consequence for noncompliance with' its 'timing provisions,' 'federal courts will not in the ordinary course impose their own coercive sanction.'" Dolan, 560 U.S. at

611 (citation omitted). It also observed that "to read the statute as depriving the sentencing court of the power to order restitution would harm those -- the victims of crime -- who likely bear no responsibility for the deadline's being missed and whom the statute also seeks to benefit." Id. at 613-614. And the Court found that the imposition of a sanction would be particularly inappropriate where the defendant "'knew about restitution,' including the likely amount, well before expiration of the 90-day time limit." Id. at 615 (citation omitted). The Court pointed out that, in those circumstances, "the defendant normally can mitigate any harm that a missed deadline might cause" by notifying the district court, "which will then likely set a timely hearing or take other statutorily required action." Id. at 615-616.

Rule 32.2 is part of the Federal Rules of Criminal Procedure, not a statute. Petitioner does not identify any features of that procedural rule that would nevertheless justify according it jurisdictional status. And the court of appeals correctly concluded that, under Dolan's reasoning, Rule 32.2 is not a claims-processing rule, either. Pet. App. A4. It does not specify any sanction for noncompliance. Further, "because forfeited funds frequently go to the victims of the crime, preventing forfeiture due to the missed deadline would tend to harm innocent people who are not responsible for the oversight," while "disproportionately benefit[ing] defendants." Ibid. And if a defendant is "concerned about possible

delays or mistakes," he "can remind the district court of the preliminary order requirement any time before sentencing." Ibid.

The Court in Dolan observed that where delay causes a defendant "prejudice," he "remains free to ask the court to take that fact into account upon review." 560 U.S. at 617. And the Court limited its holding to situations where "the sentencing court made clear prior to the deadline's expiration that it would order restitution, leaving open (for more than 90 days) only the amount." Id. at 608. But neither of those caveats affects the outcome here. Petitioner had ample notice of forfeiture: the original indictment sought forfeiture; both the bill of particulars and the evidence at trial identified the specific personal property subject to forfeiture; and the sentencing and judgment each specified the precise amount of forfeiture. C.A. App. A581-A582. As in Dolan, petitioner could have "mitigate[d] any harm that a missed deadline might cause," 560 U.S. at 615, by asking the district court to enter a preliminary order of forfeiture or requesting "an interlocutory sale of the car if he had wished to preserve its value," Pet. App. A4. Moreover, petitioner had the opportunity to contest the amount of the original money judgment on appeal, see Pet. App. B3, and later agreed with the forfeiture ordered on remand, see D. Ct. Doc. 403, at 2 n.1 (Apr. 5, 2023) (noting that "both the

government and the defense agree upon the * * * forfeiture resolution"). In short, petitioner has not "demonstrated prejudice sufficient to void the forfeiture order." Pet. App. A4.

b. Petitioner asserts (Pet. 15-16) that the decision below conflicts with United States v. Maddux, 37 F.4th 1170 (6th Cir. 2022), and United States v. Shakur, 691 F.3d 979 (8th Cir. 2012), cert. denied, 568 U.S. 1219, and 568 U.S. 1257 (2013). Both decisions are distinguishable.

In Maddux, the Sixth Circuit concluded that "Rule 32.2(b) is a mandatory claims-processing rule, rather than a time-related directive," and reversed money judgments against two defendants that were imposed in violation of Rule 32.2(b)'s deadlines. 37 F.4th at 1172. The court determined that "Rule 32.2's text, context, and purpose squarely place it in Dolan's second category" because, among other things, the Rule "repeatedly uses the mandatory 'must'"; its structure is "aimed at giving sentences finality"; and its "undoubtable purpose is to ensure defendants receive due process paired with finality and efficiency." Id. at 1176-1178. In the court's view, "[o]nce a criminal sentence is imposed, the judgment is final, both as to what it includes and what it lacks, subject to Rules 35(a) and 36," which grant district courts general authority to amend criminal judgments in limited circumstances. Id. at 1180.

Despite the differences in reasoning, Maddux does not conflict with the judgment below. Although the Maddux court noted its disagreement with the Second Circuit's reasoning in this case and with the Fourth Circuit's similar reasoning in United States v. Martin, 662 F.3d 301 (2011), cert. denied, 566 U.S. 955, and 568 U.S. 852 (2012), it found both decisions "factually distinguishable" because "the district courts in both cases orally ordered forfeiture at sentencing (or, as in Martin, at the forfeiture hearing immediately before sentencing)." 37 F.4th at 1179-1180 & n.6. The Maddux court recognized that the failure to "enter a preliminary forfeiture order" "might be remedied where forfeiture is ordered at least during sentencing." Id. at 1180. In contrast to this case, however, the district court in Maddux had not included money judgments in the announced sentences. Ibid. Given "the much more egregious fact pattern" in Maddux, the Sixth Circuit found that the "reasoning" of the Second Circuit in this case and the Fourth Circuit in Martin "can do little to guide ours." Id. at 1179 n.6.

The Eighth Circuit's decision in Shakur -- which the Sixth Circuit found to be "factually analogous" to Maddux, 37 F.4th at 1180 -- is distinguishable for similar reasons. There, the district court had noted after pronouncing the defendant's sentence that "I am going to enter a forfeiture in this case," and had

included a notation in the judgment that "Forfeiture will be imposed by further order of the Court" -- all without specifying the property at issue. 691 F.3d at 986. The Eighth Circuit concluded on those facts that the district court's "wholesale violation of * * * Rule 32.2(b)['s] mandates denied [the defendant] a meaningful opportunity to contest the deprivation of his property rights, as due process required." Id. at 988-989. And it held that the post-judgment forfeiture order "did not merely correct a 'clerical error,' as [Federal Rule of Criminal Procedure] 36 permits." Id. at 989.

Although the Eighth Circuit observed in Shakur that it "would be reluctant to follow" the Fourth Circuit's decision in Martin, it recognized that "the issue is not before us" and that "Martin is factually distinguishable * * * in critical respects," including that the defendant in Martin (like petitioner here) indisputably had "a meaningful opportunity to contest the deprivation of his property rights." 691 F.3d at 988 & n.6; see pp. 17-18, supra (discussing prejudice). In addition, the district court in this case, unlike the one in Shakur, specified in the original criminal judgment the specific personal property and money that were subject to forfeiture. C.A. App. A522. The absence of any conflict between Shakur and the decision below is confirmed by a later Eighth Circuit decision, which distinguished Shakur in the course of holding that another deadline in Rule 32.2 is a "time-

related directive." United States v. Williams, 720 F.3d 674, 701-702 & n.20 (2013) (citation omitted), cert. denied, 571 U.S. 1223 (2014).

2. a. The Hobbs Act prohibits robbery or extortion that "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. 1951(a). The statute defines "'commerce'" to include "all * * * commerce over which the United States has jurisdiction." 18 U.S.C. 1951(b)(3). As this Court has observed, "[t]he language of the Hobbs Act is unmistakably broad," reaching "any obstruction, delay, or other effect on commerce, even if small." Taylor v. United States, 579 U.S. 301, 305 (2016); see, e.g., United States v. Culbert, 435 U.S. 371, 373 (1978) (observing that the words of the Hobbs Act "do not lend themselves to restrictive interpretation"); Stirone v. United States, 361 U.S. 212, 215 (1960) (noting that the Act "manifest[s] a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence").

In Taylor, this Court considered whether evidence that the defendant had "target[ed] drug dealers" as his robbery victims was sufficient to satisfy the Hobbs Act's commerce element, even if "the drug dealers he targeted might [have] deal[t] in only locally grown marijuana." 579 U.S. at 303-304. The Court explained that the Hobbs Act extends to all robberies that affect any of the

"categories of activity that Congress may regulate under its commerce power." Id. at 306. The Court noted that its prior decisions had "'upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature,'" and observed that the sale of marijuana is "unquestionably an economic activity." Ibid. (citation omitted). Because "the market for marijuana, including its intrastate aspects, is 'commerce over which the United States has jurisdiction,'" the Court reasoned that it "follows as a simple matter of logic that a robber who affects or attempts to affect even the intrastate sale of marijuana grown within the State affects or attempts to affect commerce over which the United States has jurisdiction." Id. at 307.

The foregoing principles resolve this case. The evidence showed that "Rizzatti was engaged in two informal businesses affecting interstate commerce: selling ice cream wholesale that was manufactured in and purchased from New Jersey, and loaning money to people in New York who used it for out-of-state contracts." Pet. App. B4. Wolf testified that, prior to the robbery, he informed petitioner that Rizzatti "was a loan shark" who "lends money and * * * has a lot of money in the house that I've seen before." C.A. App. A239. And during the robbery, petitioner shocked Rizzatti with a stun gun numerous times while demanding to know where Rizzatti kept "the money." 8/13/13 Trial Tr. 120.

Rizzatti testified that the $70,000 taken from his ceiling was money "from all [his] work from over the years." Id. at 128.

As in Taylor, petitioner was "unquestionably" engaged in "economic activity" through his ice cream and lending businesses. 579 U.S. at 306. Markets for selling ice cream and lending money are subjects that "Congress may regulate under its commerce power." Ibid. Petitioner "specifically sought to steal the cash Rizzatti used in conducting these enterprises, thus depleting the assets and affecting Rizzatti's ability to purchase more ice cream manufactured in New Jersey and to extend additional loans." Pet. App. B4. Accordingly, petitioner "affect[ed] or attempt[ed] to affect commerce over which the United States has jurisdiction." Taylor, 579 U.S. at 307.

Petitioner's factbound arguments are mistaken and, in any event, would not warrant this Court's review. Petitioner objects (Pet. 22) that the court of appeals found it "sufficient that Rizzatti had in the past purchased ice cream from an in-state supplier that purchased ice cream from an out of state supplier." But the court of appeals noted Rizzatti's testimony "that he believed the ice cream was sourced from New Jersey at the time of the robbery," and observed that "no contrary evidence was introduced." Pet. App. B4. Petitioner also complains (Pet. 22) that the government failed to introduce evidence showing that "the money

stolen from Rizzatti's house would be used in his ice cream business." But the court of appeals found that an effect on Rizzatti's businesses was the "inevitable result of unexpectedly losing a significant amount of money." Pet. App. B4. And regardless, Taylor concluded that targeting the "proceeds" of a commercial business subject to congressional regulation is sufficient to satisfy the Hobbs Act's jurisdictional element, regardless of whether the stolen money would have been used prospectively in that business. 579 U.S. at 310.

b. Petitioner suggests (Pet. 23-24) that the court of appeals' unpublished decision in this case conflicts with United States v. Peterson, 236 F.3d 848 (7th Cir. 2001), and United States v. Wang, 222 F.3d 234 (6th Cir. 2000). Petitioner is mistaken.

In Peterson, the Seventh Circuit held that the Hobbs Act's jurisdictional element was not satisfied because the evidence was insufficient to establish that the robbery victim's marijuana business was "interstate in nature." 236 F.3d at 854. But Taylor abrogated that holding, specifically citing Peterson and rejecting its reasoning. Taylor, 579 U.S. at 308 (rejecting defendant's argument that the government needed to prove "(1) that the particular drugs in question originated or were destined for sale out of State or (2) that the particular drug dealer targeted in the robbery operated an interstate business," and criticizing Peterson's reasoning as "flawed"). In any event, the evidence here

established a connection between Rizzatti's businesses and interstate commerce. See pp. 22-24, supra.

In Wang, the Sixth Circuit reversed the Hobbs Act conviction of a defendant who "robbed private citizens in a private residence of approximately $4,200, a mere $1,200 of which belonged to a restaurant doing business in interstate commerce," finding that the evidence did not establish "a substantial connection between the robbery and the restaurant's business" or "'an [e]ffect on interstate commerce.'" 222 F.3d at 239-240 (brackets in original). But that decision also predated Taylor, which held that "to satisfy the Act's commerce element, it is enough that a defendant knowingly stole or attempted to steal * * * drug proceeds," and that "in a case like this one, * * * proof that the defendant's conduct in and of itself affected or threatened commerce is not needed." 579 U.S. at 309 ("[I]t makes no difference under our cases that any actual or threatened effect on commerce in a particular case is minimal.").

Wang is also distinguishable on its facts. The Wang court suggested that the government might carry its burden "by demonstrating that the defendant knew of or was motivated by the individual victim's connection to interstate commerce." 222 F.3d at 240. The government introduced such evidence in this case. See C.A. App. A239 (Wolf testimony that he informed petitioner of Rizzatti's lending activities). The Wang court also recognized

that a "de minimis" effect on commerce is sufficient to satisfy the Hobbs Act's jurisdictional element, but found such an effect absent in that case given the relatively small sum of money at issue. 222 F.3d at 239-240 & n.2; see id. at 239 (recognizing that "victimization of a single individual for a very large sum[] can have the potential directly to affect interstate commerce"). In contrast, the court of appeals in this case was confronted with a different set of facts involving a far larger sum, and concluded that "a 'very slight effect' on one's informal businesses is an inevitable result of unexpectedly losing a significant amount of money." Pet. App. B4.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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